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ABSTRACT

Both Federal and State administrative policies were examined by a Congressional committee as part of a general evaluation of the Elementary and Secondary Education Act Title I programs. The principal findings of the committee are presented. Proceedings of the hearings on Title I administration, statements of educators, and supporting statistics and documents are provided. Major topics addressed include policy for allocation of funds for compensatory education programs and the eligibility standards for recipients of Title I benefits. Possibilities for changing eligibility requirements are debated. Data on monies available to individual states are presented in table form. The relationship between Title I, ESEA, and selected State compensatory education programs is described and analyzed. The issue of schools with substantial numbers of educationally disadvantaged children is considered. The 1977 amended version of Title I, 1976 rules and regulations, and a report from the National Institute of Education on administration of compensatory education programs are appended to the volume. Also provided are a number of letters and statements relevant to the evaluation of administrative aspects of compensatory education. (GC)

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ED154072

PART 18: ADMINISTRATION OF TITLE I OF ESEA

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 15

TO EXTEND FOR FIVE YEARS CERTAIN ELEMENTARY, SECONDARY, AND OTHER EDUCATION PROGRAMS

HEARINGS HELD IN WASHINGTON, D.C.
OCTOBER 25, 26, AND 28, 1977

Printed for the use of the Committee on Education and Labor
Carl D. Perkins, *Chairman*

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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CONTENTS

Hearings held in Washington, D.C.: Page

- October 25, 1977 ... 1
- October 26, 1977 ... 73
- October 28, 1977 ... 215

Statement of—

- Crew, John L., superintendent of public instruction, Baltimore City Public Schools ... 141
- Faxon, Hon. Jack, State senator from the State of Michigan ... 157
- Greer, Robert O., assistant superintendent of public instruction, Ohio Department of Education ... 216
- Hill, Dr. Paul, Director, Compensatory Education Study, National Institute of Education, accompanied by Dr. Iris C. Rotberg, Associate Director, Compensatory Education Study, NIE, and Dr. Donald W. Burnes, NIE senior associate ... 2
- Jefferson, Arthur, general superintendent, Detroit Public Schools ... 195
- Kropatkin, Philip, Deputy Director, HEW Audit Agency ... 26
- Minter, Dr. Thomas K., Deputy Commissioner, Bureau of Elementary and Secondary Education, U.S. Office of Education, accompanied by Dr. John Rodriguez, Associate Commissioner for Compensatory Educational Programs, Dr. Richard Fairley, Director, Division of Education for the Disadvantaged, and Mrs. Genevieve O. Dane, Program Operations Branch Chief, Division of Education for the Disadvantaged ... 20
- Peagler, Owen F., Chairman, National Advisory Council on the Education of Disadvantaged Children ... 132
- Silverstein, Robert, director, legal standards project, Lawyers' Committee for Civil Rights Under Law, accompanied by David Long, Lawyers' Committee for Civil Rights Under Law ... 262
- Whiteneck, Bill, deputy superintendent for administration, California State Department of Education ... 258

Prepared statements, letters, supplemental materials, et cetera—

- Crew, John L., superintendent of public instruction, Baltimore City Public Schools, testimony by ... 136
- Dane, Mrs. Genevieve, program operations branch chief, U.S. Office of Education:
  - California (Long Beach) Title I Audit Report ... 62
  - Memorandum dated Oct. 12, 1977 ... 63
  - Fairley, Dr. Richard, director, division of education for the disadvantaged, U.S. Office of Education:
    - Information requested at hearing ... 46
    - Comparability report of summary data ... 57
- Faxon, Hon. Jack, State senator from the Michigan State Senate, statement by ... 144
- Greer, Robert O., assistant superintendent of public instruction, Ohio Department of Education:
  - Testimony by ... 216
  - "Children First," publication entitled ... 245
  - Standards and guidelines for urban education, the allocation of funds, etc ... 232
- Hill, Dr. Paul, director, Compensatory Education Study, National Institute of Education:
  - Prepared statement of ... 2
  - Seventeen States have compensatory education programs (chart) ... 19
  - State administration staffing, fiscal year 1976 (chart) ... 17
  - Table 27, percent of schools ineligible under one criterion but eligible under each of the others (table) ... 37
- Jefferson, Arthur, general superintendent of the Detroit Public Schools, testimony of ... 164

Prepared statements, letters, supplemental materials, etc.—Continued Page

Kropatkin, Philip, deputy director, HEW Audit Agency:
  Background and Experience of Auditors in Relation to Title I Audits. . 52
Minter, Dr. Thomas K., Deputy Commissioner, Bureau of Elementary and Secondary Education, U.S. Office of Education:
  Question and Response of Dr. Minter 59
Peagler, Owen F., Chairman, National Advisory Council of the Education of Disadvantaged Children:
  Legislative report 95
  Statement of 74
  Statistical data (tables) 119
Silverstein, Robert, director, legal standards project, Lawyers' Committee for Civil Rights Under Law:
  "A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs, Chapter 8, The Title I Supplementing and Equitably Provided Provisions and State Compensatory Education Programs", article entitled 329
  Issues concerning the operation of the comparability provision, article entitled 429
  Schools with substantial concentrations of children who are educationally deprived, article entitled 413
  Statement of 265
  The distinct types of discrimination prohibited by the funds allocation provisions, article entitled 422
  "Title I and State Compensatory Education Programs", outline accompanying statement of 263
Whiteneck, Bill, deputy superintendent for administration, California Department of Education, testimony of 246

APPENDICES

Appendix 1
  Title I, Elementary and Secondary Education Act, as amended through June 30, 1977 441
Appendix 2
  Title I rules and regulations, from Federal Register, September 28, 1976.. 469
Appendix 3
  "Administration of Compensatory Education," A report from the National Institute of Education 494
Appendix 4
  Miscellaneous letters and statements:
    Brouillet, Dr. Frank B., superintendent of public instruction, Washington State Department of Education, letter to Ms. Nancy Kober enclosing prepared testimony of Mr. William Daley, Federal liaison officer, Washington, State Department of Education 591
    Blaschke, Dr. Charles L., president, Education Turnkey, Inc., "The Dysfunctional Elements in the Title I Structure" 595
    Wright, Dr. Edward W., superintendent, Franklin County, Ky., Board of Education, letter to Chairman Perkins 610
Appendix 5
  Letter from Chairman Perkins to Dr. Paul Hill requesting additional information 612
  Response from Dr. Hill 614
  Letter from Chairman Perkins to Dr. Thomas Minter requesting additional information 622
  Response from Dr. Minter 625
  Letter from Chairman Perkins to Dr. Phillip Kropatkin requesting additional information 652
  Response from Dr. Kropatkin 654

PART 18: ADMINISTRATION OF TITLE I OF ESEA

TUESDAY, OCTOBER 25, 1977

House of Representatives,
Subcommittee on Elementary, Secondary and
Vocational Education,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:41 a.m., in Room 2175, Rayburn House Office Building, the Hon. Carl D. Perkins (chairman of the subcommittee) presiding.

Members present: Representatives Perkins, Mottl, Miller, Kildee, Quie, and Pressler.

Staff present: John F. Jennings, majority counsel; Christopher Cross, minority senior education consultant; and Nancy L. Kober, staff assistant.

Chairman **Perkins**. The committee will come to order.

The Subcommittee on Elementary, Secondary and Vocational Education is continuing hearings today on H.R. 15, a bill to extend for 5 years certain expiring elementary and secondary education programs. This week we will focus on those issues related to the administration of Title I of the Elementary and Secondary Education Act.

The question of how Title I is being administered is crucial to the future of the program. Since we are appropriating about $2.5 billion this year to support Title I programs in all the States and in 14,000 local school districts, it is of utmost importance that we see these funds are indeed being spent to improve the education of deprived children in ways consistent with the law.

Given the scope of the program, we can all appreciate the difficult task administrators at all levels face in enforcing this legislation. With this hearing and other hearings this week, we hope to find out whether the regulations and HEW's attempts to enforce them are appropriate; whether the law, regulations, and monitoring efforts at all levels are consistent; whether States and school districts are clear as to their responsibilities; and what the nature and effects of State compensatory education programs are.

Toward this end, the National Institute of Education conducted a study of the administration of Title I. I am pleased to welcome back a panel from NIE to discuss their findings. I am also pleased to welcome a panel of distinguished witnesses from the Office of

Education and the HEW Audit Agency to testify on their administrative policies.

Our first witness this morning will be Dr. Paul Hill, Director, Compensatory Education Study, National Institute of Education; accompanied by: Dr. Iris C. Rotberg, Associate Director, Compensatory Education Study; and Dr. Donald W. Burnes, NIE Senior Associate.

STATEMENT OF DR. PAUL HILL, DIRECTOR, COMPENSATORY EDUCATION STUDY, NATIONAL INSTITUTE OF EDUCATION; ACCOMPANIED BY: DR. IRIS C. ROTBERG, ASSOCIATE DIRECTOR, COMPENSATORY EDUCATION STUDY; AND DR. DONALD W. BURNES, NIE SENIOR ASSOCIATE

[The prepared statement of Dr. Paul Hill follows:]

STATEMENT OF

PAUL T. HILL
DIRECTOR, COMPENSATORY EDUCATION STUDY
NATIONAL INSTITUTE OF EDUCATION

ACCOMPANIED BY

IRIS C. ROTBERG
ASSOCIATE DIRECTOR
COMPENSTORY EDUCATION STUDY

AND

DONALD W. BURNES
NIE SENIOR ASSOCIATE

BEFORE

SUBCOMMITTEE ON ELEMENTARY,
SECONDARY AND VOCATIONAL EDUCATION
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

OCTOBER 25, 1977

Mr. Chairman, members of the subcommittee, I am Paul Hill, Chief of the Compensatory Education Division of the National Institute of Education, and I am pleased to have this opportunity to participate in the hearings on the administration and management of Title I of the Elementary and Secondary Education Act.

For the past three years, I have directed a major study of Title I which was requested by the members of this Committee in 1974. I am accompanied this morning by two colleagues who played major roles in the implementation of that study: Dr. Iris Rotberg, the Associate Director of the Study, and Dr. Donald Burnes, who managed our studies of Title I administration.

Mr. Chairman, before discussing NIE's specific findings regarding the administration of Title I, I do want to state for the record that our examination of Title I administration was but one aspect of a broad program of research we have completed.

As many members of this Committee are aware, when Congress extended the Elementary and Secondary Education Act in 1974, there was considerable debate about whether or not Title I had achieved the goals Congress intended when the legislation was enacted in 1965.

This Committee, feeling the need for additional information on the effectiveness of Title I, requested that NIE conduct a comprehensive three-year study of Title I.

Our approach to evaluation has been to try to understand how the Title I program operates, in order to assess its accomplishments and to identify areas in need of improvement. Quite obviously, an examination of the Administration of the program is an essential element of such an approach. In addition, we examined three other areas in evaluating Title I as it now exists:

(1) Funds allocation--do Title I funds actually flow to the kinds of places which Congress intended?

(2) Services--are special services that can be considered additional, or distinctive, or improved, actually provided to participating children?

(3) Student development--does the program have any effect on the achievement of participating children?

We also investigated two additional questions which were of great interest in the 93rd Congress: the effects of altering the definition of poverty used to allocate Title I funds, and the effects of using counts of low-achieving children, and not low-income children, to allocate funds both to school districts and within them.

Mr. Chairman, as part of these hearings we have already submitted for the record a summary of our major findings in each of these areas. I will not, therefore, address them further, but wish, instead, to focus upon the administration and management of the largest federal compensatory education program, Title I of the Elementary and Secondary Education Act.

Mr. Chairman, our evaluation of Title I included the first comprehensive examination of the administration of the program, and studied both Federal and state administration as well as their effects on the quality of programs delivered by LEAs.

Our report on administration has been interpreted widely in the press and elsewhere as being highly critical of USOE's current administration of the program.

Indeed, the report does identify several problems and deficiencies in the present administration of Title I. However, our research also shows that the Federal Government's approach to the management of the program is fundamentally sound.

The regulations governing the use of Title I funds by school districts are reasonably effective in guaranteeing that funds will be used to provide special educational services to disadvantaged children. As long as such a special use of Title I funds is intended by Congress, such regulations are needed to counterbalance the pressures on LEAs to use federal funds for general aid or tax relief.

In addition, HEW's efforts to verify that the regulations are observed in practice are appropriate. They consist of program review visits to a few districts each year, and fiscal audits in a few others. The results of these site visits and audits can provide guidance even to districts which are not visited. This system does not require massive federal enforcement effort, and it does not place heavy burdens on the states or LEAs. As I shall discuss below, HEW may not be implementing this system on a large enough scale, or with enough consistency, to make its effects felt throughout the educational system.

There ~~are many~~ problems with the ways in which HEW conducts the day-to-day management of the program. Still, Title I administration is probably better now than at any time since the program was enacted.

In the early years of the program, local administrators though they could use Title I money as general aid. Most now know that they cannot.

In the early years of the program, special services were not, according to some early evaluations, being provided to the target population. Our analysis of Title I services shows that that is no longer the case.

Finally, the legal framework specifying how Title I funds should be used has been greatly strengthened since 1970 by this committee as well as by those responsible for writing the regulations.

The result of this activity has been that state and local educators unanimously told us that Title I has helped reverse an historical pattern of American education--the neglect of the poor and disadvantaged by out school systems--and, in fact, encouraged states and localities to commit their own resources to these neglected groups.

Moreover, Title I has also built groups of local and state administrators who are dedicated to the goal of serving disadvantaged children.

Legal Framework

We examined the legal framework governing the use of Title I funds to find out if it was consistent, necessary, flexible, and clear and, if not, how these problems affected the implementation of Title I programs in local districts.

We distinguished between what we termed the funds allocation requirements of the legal framework--which govern the use of funds at the local level--and the program development requirements--which are designed to insure that LEAs provide services of high quality to participating students.

In general, we found the following:

- The entire legal framework, made up of the statute, the regulations, and the letters of advice to states and school districts is, on the whole, consistent. None of the regulations or letters of advice conflict with the statute nor with each other.
- The funds allocation requirements, which restrict the ways in which LEAs use funds, appear necessary if the Congressional goal of providing special services to educationally disadvantaged children is to be met. Without those requirements, districts probably would not resist the pressure to use Title I funds for other general educational needs or for tax relief.
- The program development requirements are not necessary in the same sense, since districts have no incentives to deliver poor services. However, as a model for district planning they are certainly useful and are flexible enough so that school districts can develop widely different programs to meet the needs of educationally disadvantaged children.
- However, the clarity with which the framework is presented to state and local personnel leaves a great deal to be desired, and has led to some considerable confusion in the field.

The language of the framework is not clear enough to give useful guidance to state and local officials. To develop an understanding of the Title I requirements currently requires a greater degree of legal scholarship and practical experience than many state and local officials have been able to attain.

As a result, some states and districts have planned their programs more conservatively than the law or the regulations require in order to avoid being charged with violations during program audits. In some areas, for example, the provision of special services in the regular classroom is forbidden and students are pulled out of class for their compensatory instruction because state and local officials believe they are required to do so. However, there is no such requirement in the statute, the regulations, nor in any letter of advice we have seen.

Disagreement within OE

Mr. Chairman, I want to make one other point about the federal administration of Title I. It concerns the day-to-day management of the program by the Office of Education. As our report on the administration of compensatory education makes apparent, there has been significant dispute within the Office of Education about the appropriate role of the Federal Government in monitoring Title I expenditures. More specifically, the dispute focused on how the government should implement the provisions of Title I requiring that the funds supplement and not replace local funding.

On the one hand, officials in the Division for Education of the Disadvantaged (DED) and those in the HEW Audit Agency, believe in aggressively implementing these requirements in order to guarantee that individual Title I students receive supplementary services.

On the other hand, the Office of the Associate Commissioner for Compensatory Education Program, which supervises DED, has rejected many of the tests for compliance used in Title I program reviews and audits. In addition, the Associate Commissioner's office has held that the supplementation guarantees could be enforced only to the level of the school, not the individual child.

This tension is a present-day version of the conflicts which predated enactment of ESEA, the degree to which the Federal Government should act to guarantee that funds are used for educationally disadvantaged children. This disagreement has had very serious consequences for federal administration of Title I: enforcement of the supplementation guarantees has been declining in the past several years. States and districts have not received consistent advice, and they have been increasingly unsupervised in the use of Title I funds.

I must say, Mr. Chairman, that we have been gratified to learn that in the new Administration, OE is moving vigorously to address some of the problems which we described.

In particular, with regard to the clarity of the direction provided LEAs and SEAs, we understand that a comprehensive policy manual is now being planned.

We also understand that OE is attempting to develop a definitive statement in the area of supplementation so that local administrators can know what is required of them and DED officials can know what it is they are expected to monitor.

Work in both of these areas will take some time. For example, the technical issues involved in guaranteeing supplementation can be difficult to resolve, and resolving them requires more than merely a decision to do so.

State Administration

Mr. Chairman, the major responsibility for managing and monitoring local Title I programs is born not by the Office of Education but by State Education Agencies.

It is at the state level that local Title I applications are approved. The states distribute, and reallocate, Title I dollars, and they are also required to provide technical assistance to LEAs and to monitor LEA compliance with the Title I regulations and enforce such compliance.

As our report indicates, states vary greatly in how they administer Title I. They differ in how and to what degree they disseminate information, provide technical assistance, and monitor and enforce compliance. There are two major reasons for these differences.

First, many states are unclear as to their exact responsibilities and authority in several of these areas, particularly those related to auditing and the application of fiscal penalties. The truth is that the legal framework is ambiguous on several of these points. For example, the Title I regulations expressly permit SEAs to withhold Title I funds only in the case of comparability violations. However, provisions of the General Education Provisions Act suggest that SEA authority is much broader.

Second, there are wide variations in the resources that states have available for administration and in how the states use the resources they have.

Although there is a formula for determining the amount of money states can use for administrative purposes, it does not take into consideration the number of Title I districts in the states. Therefore, although states have, on average, about $2700 in administrative money per Title I LEA, one state has only $343 per LEA, while another has over $13,000.

Our report also shows that states use the money they do have in different ways. Some states use most of their set-aside on staff. Others use substantial portions for other expenses such as contractors, consultants, and indirect costs. In fact, one state takes as much as 35% of the total set-aside for indirect costs, according to its Title I director.

Mr. Chairman, as our report suggests, we feel that these differences in availability and use of resources are important. Those states which are less active and less effective in dealing with local school districts were generally those which used a smaller proportion of the Title I administrative money for hiring staff. Those states were generally less able to play a significant role in providing guidance and assistance to local districts, because they were able to have fewer direct contacts with LEA personnel.

We believe, therefore, that the most effective way to help states provide good management is to encourage states to use their Title I administrative funds to hire more staff. For some states, this could be accomplished by expanding the size of the administrative set-aside which Title I provides.

However, it is not clear that the amount of administrative funding is the key point. Some states that receive the minimum administrative set-aside of $150,000 have invested it heavily in staff. Others, with more money, have not.

State Compensatory Education Programs

The final issue we examined was the relationship of Title I to compensatory programs designed and funded by the states themselves.

State compensatory education programs have been established in almost a third of the states and provide a significant level of funding for compensatory services.

In general, they follow the pattern of Title I, although some interesting alternative funding patterns have been developed. They target funds to the same types of pupils, and provide the same types of services. Moreover, to the degree that states try to guarantee that funds are used for supplementary services rather than general aid or tax relief, they rely on a system, similar to Title I's, of monitoring and sanctions and depend on staff funded from the Title I administrative set-aside to implement their system.

Thus, state programs do not offer a better way of guaranteeing the supplementary services mandated by the Title I statute. While some of their technical features might be desirable in the Federal program, they do not offer a model that suggests fundamental changes in Title I.

Because the 1974 Education Amendments permitted the waiver of comparability requirements, most states do not perceive serious tensions between state and Federal requirements. State coordinators, instead, find Title I useful as a model and a source of help in protecting state compensatory funds from use as general aid.

The one exception to this observation is the State of California whose Early Childhood Education (ECE) program has different funding objectives from Title I and is, therefore, difficult to reconcile with the Title I legal framework.

In general, state programs provide services which complement and augment Title I programs. However, their continued growth is not assured.

Compensatory programs must compete with other claims for state and local funds. States that have established their own compensatory programs generally can call on greater financial resources than those that have not. In a time of general fiscal crisis in education, it is unlikely that many more states will initiate major SCE programs.

To conclude, Mr. Chairman, our examination to date of Title I administration indicates that the administrative structure is basically sound and that the legal framework is, on the whole, consistent. Moreover, the funds allocation requirements, which restrict the ways in which LEAs use funds, appear necessary if the Congressional goal of providing special services to educationally disadvantaged children is to be met.

However, problems with regard to the clarity of Title I's legal framework need to be addressed. The language of the framework is not clear enough to give useful guidance to state and local officials. This lack of clarity has serious consequences, because Title I coordinators who misunderstand the legal framework are likely either to violate its requirements or to adopt unduly restrictive policies. One way of improving the clarity of the Federal framework would be to assemble and interrelate in one place the various interpretive rules that OE has developed into a policy manual.

Our report also described the inconsistency in OE's day-to-day monitoring and enforcement of Title I provisions which require that funds supplement and not replace local funding. We understand that OE has begun the process of developing a consistent policy for monitoring supplementation.

We think, also, that the Committee might consider means of encouraging states to utilize more staff in the administration of Title I.

Nevertheless, these difficulties seem to be managerial and technical in nature and do not appear to be of the sort that require large-scale rethinking of how to manage this important program.

I appreciate the opportunity to present our principal findings in this area and will be pleased to answer any questions on the statement or the report on administration.

11-12

Dr. **Hill**. Last year we focused our testimony on the services and student development effects of the Title I program. Our topic today is the administration of compensatory education.

I have asked two members of my staff, who were principal contributors to the research on administration. They are Dr. Donald Burnes, Administrative Manager of the Studies, and Dr. Iris Rotberg, Deputy Director of the study, they are available to answer questions.

Administration is extremely important in Title I. Congress intends that Title I funds will be used in special ways for special beneficiaries and to provide special services. It is not simply a program of general aid to jurisdictions. As a result, administraition to control the use of funds is an important feature of the program.

Our general conclusion is that the administrative system of Title I is soundly conceived but that it is not well implemented in detail. The regulations which govern the program are basically sound and the management system is workable. The Office of Education manages the program by making occasional visits to small numbers of districts to verify their compliance with the regulations and by publishing the results of those visits so that districts not visited can learn from them. We believe this is a sound practice. It may not be done with sufficient vigor, or consistently enough but it is the right approach.

Now for our detailed findings.

First, Mr. Chairman, we looked at the legal framework of the program, the statute regulations and guidelines upon which the program is based. That legal framework is the backbone of the program; it establishes Title I's purpose of the procedures.

We reviewed the Title I legal framework according to four criteria: consistency, necessity, restrictiveness, and clarity. We found that the Title I regulations and the whole legal framework is consistent. That means that, school districts do not have to violate one requirement in order to abide by another.

We also found, in general, that the regulations are necessary, particularly the regulations that govern funds allocation. Funds allocation regulations guarantee that funds will be used for educationally disadvantaged children and to provide additional service for them. Local school districts now face real fiscal challenges. They are under pressure to use any money they get from the Federal Government as general aid, not for specifical purposes such as Title I intends.

We concluded that without the funds allocation regulations in the Title I legal framework, the special purposes of the program could not be met.

There are other regulations we call program regulations that govern the planning and management of instructional services. Those regulations are not necessarily in the same sense as the funds allocation regulations. Local districts may have incentives to use Federal categorical funds for general aid. No district has an incentive to provide bad services, but the program regulations, we think, are generally constructive. They represent a reasonable approach to helping school districts improve their services.

We also asked whether the legal framework was overly restrictive. We concluded it was not. That means that the regulations do not curtail innovation in instructional services. Local districts for the most part can deliver very inventive constructional services under Title I. We did not find any school district that was inhibited in providing a good instructional service by the regulations.

Finally, we asked whether the Title I regulations were clear. We concluded they were generally not. That is important because the regulations are not meant simply for use by courts, lawyers and other technicians. They are meant for use by people in the local area who are dedicated to the objectives of the Title I program and who want to know what the program funds are to be used for. If they can't readily understand the regulations, then the integrity of the program is lost. To understand the regulations, a person has to become a real legal scholar, and that is not a reasonable expectation of a State or local official.

As we interviewed State education officials, we found that the program requirements of Title I were the ones they had the most trouble with. The program requirements in Title I are both less necessary and less clear than the funds allocation requirements.

Mr. Chairman, in addition to our study of regulations, we also looked at the Federal management of the program. USOE writes the regulations, but they also apply them and interpret them on a day-to-day basis. Our conclusion was that in many ways, the day-to-day management is inconsistent and that this inconsistency leads to confusion both in Washington and in the field about what the program is for.

Often the standards which are used in site visits to local districts to test compliance are not shared throughout the Office of Education. When field reviewers bring in a finding of noncompliance, the standards used inside OE to review the findings are different from the ones used in the field. Because of a disagreement inside the Office of Education, some school districts are able to shop around and find USOE officials who will agree with their particular interpretation. That can lead to the use of different rules for different places.

The effect of all this is a weakening of many of the guarantees that are written into the legal framework. In particular, the guarantee that Title I funds were used to supplement educational services for needy children is weakened.

I was gratified to receive a copy of the Commissioner's memo of September 29 saying, partly in response to our findings, that many of these problems were going to be corrected. The Office of Education is now trying to write a program manual to clarify the regulations and OE's interpretation of them. They face a difficult problem. It is a difficult problem they face. It is no simple matter to safeguard the supplementary nature of the program and yet not interfere with local autonomy. It can be done but it will take a lot of work. The decision to solve the problem is only the first step.

Mr. Chairman, we also studied State administration. The administrative system of Title I assumes that States and the Federal Government will be partners in the delivery of Title I services. We found that the partnership doesn't work as well as it might. There are two reasons for that. One reason is that the regulations don't say clearly what the State's responsibilities are. For example, the whole administrative structure assumes that States will have authority to audit local agencies and to withhold funds from local agencies that are not implementing the program properly. But that is never explicitly stated in the regulations, and some States are reluctant to use those powers if they are not made explicit. So many states do not feel empowered to do the things that good administration of Title I requires.

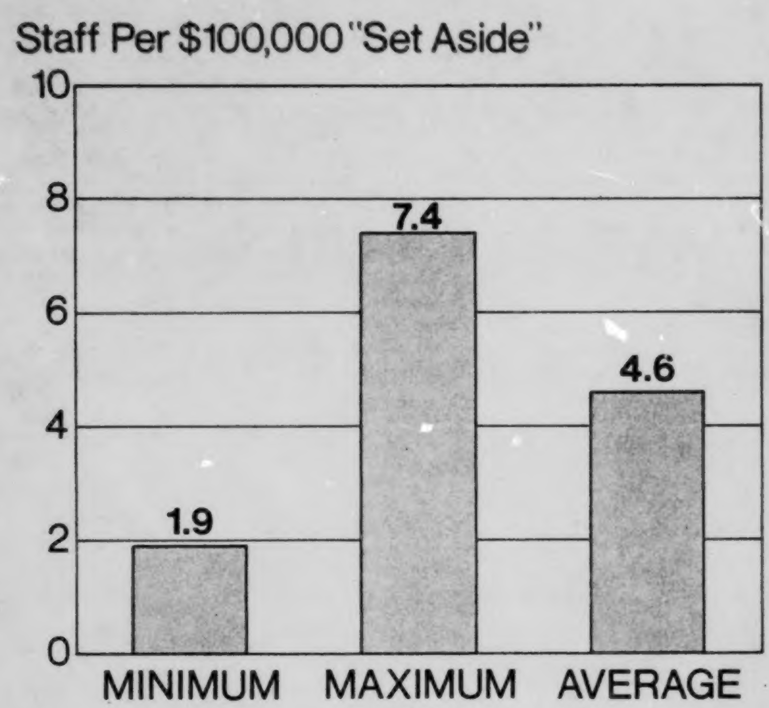
The second reason that the partnership between States and the Federal Government is not working perfectly is that States differ considerably in their orientations to Title I. Differences among States is generally a good thing, and that is why we have a Federal system. But we found that the differences among States are so great that in some States the effectiveness of Title I administration is questionable.

Some States are very active and helpful toward their local districts and try to guarantee compliance with the regulations. Other States are considerably less so.

[Chart entitled "State Administration Staffing - Fiscal Year 1976" shown.]

STATE ADMINISTRATION STAFFING

Fiscal Year 1976



Other Uses for "Set Aside:"
- Consultants
- Contractors
- Overhead

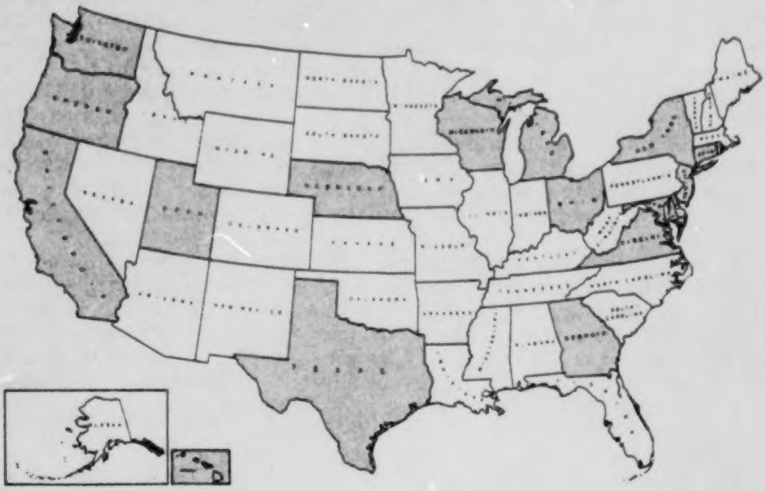
Dr. HILL. This chart provides some key information about State administration. All of the States, Mr. Chiarman, get an administrative set aside. They don't have to use their own money to administer Title I. Each State has a iot of freedom about how it may use the adminstrative funds. This chart shows that some States use a very high proportion of their administrative set aside to hire staff. Some States hire as many as 7-1/2 full-time equivalent staff for $100,000 and those States are able to use that staff to have direct contact with the local districts, to advise them, and to help them. Other States, as the charts shows, hire less than 2 staff members per $100,000. Those States are considerably less able to be active in the field. States which do not hire many staff members tend to use set aside funds for consultants, contractors, and overhead expenses. In general, those uses of funds do not permit the States to have a direct contact with the local agencies. The kind of contact which is permitted by State staffing is very important in providing good services and compliance within the local districts.

Obviously, Mr. Chairman, State administration of Title I is meant to be a State responsibility and certainly their use of administrative funds is meant to be so. It would be possible to increase the number of State staff hired by giving States more money. But some States could hire a lot more staff with the set aside funds they are now getting.

The final topic we investigated, Mr. Chairman, was State compensatory education programs, that is, programs which were funded by State legislatures.

[Chart entitled "17 States Have Compensatory Education Programs" shown.]

Seventeen States Have Compensatory Education Programs.



Dr. **Hill**. We studied those programs for several reasons—first, to describe the services they provide and the children they serve. In general, State compensatory education programs provide similar services to Title I. Sometimes they serve grade levels which Title I doesn't serve. In general, the State compensatory education programs are supplements to the Title I program.

We also reviewed the degree to which State programs were innovative and might set a new pattern for Title I. Many State programs are innovative with respect to allocation of funds. For example, Michigan and New York allocate funds according to student achievement. The State programs there work well. However, the actual students served by those programs and the services delivered are really no different from Title I and other programs which use poverty as the standard for funds allocation.

Then we also asked whether there were problems in the compatibility of State compensatory education programs with Title I. In general, we found that Title I does not interfere with State compensatory education programs. In fact those programs rely on the Title I regulations and on Title I paid staff for most of their administration.

There can be conflicts between Title I and State programs when the State programs have goals different from Title I—if, for example, they intend to provide general aid to schools. But those conflicts are conflicts of objectives, and do not stem from technical problems in Title I.

In summary, Mr. Chairman, we found that the basic administration of Title I is sound and has been aimed at reasonable objectives. There are problems in the administration of Title I. The regulations need to be made more clear. Consistency of administration at the Federal level is lacking and the adequacy and focus of State administration could be improved. But, in general, we found that the administrative system is sound and workable.

Mr. Chairman, that concludes my testimony.

Chairman **Perkins**. That was excellent testimony.

Dr. Minter, deputy commissioner, Bureau of Elementary and Secondary Education, U.S. Office of Education; accompanied by: Dr. John Rodriguez, associate commissioner for Compensatory Educational Programs; Dr. Richard Fairley, director, Division of Education for the Disadvantaged; and Mrs. Genevieve O. Dane, program operations branch chief, Division of Education for the Disadvantaged.

STATEMENT OF DR. THOMAS K. MINTER, DEPUTY COMMISSIONER, BUREAU OF ELEMENTARY AND SECONDARY EDUCATION, U.S. OFFICE OF EDUCATION; ACCOMPANIED BY: DR. JOHN RODRIGUEZ, ASSOCIATE COMMISSIONER FOR COMPENSATORY EDUCATIONAL PROGRAMS; DR. RICHARD FAIRLEY, DIRECTOR, DIVISION OF EDUCATION FOR THE DISADVANTAGED; AND MRS. GENEVIEVE O. DANE, PROGRAM OPERATIONS BRANCH CHIEF, DIVISION OF EDUCATION FOR THE DISADVANTAGED

Dr. **Minter**. Mr. Chairman and members of the committee:

It is a pleasure to appear before you today to report on the administration of the Title I program.

Title I programs are serving educationally deprived children in the 50 States, the District of Columbia, the outlying areas, and in schools operated or supported by the Bureau of Indian Affairs. The law authorizes local educational agencies to plan and implement projects to meet the special needs of educational deprived children subject to State department of education approval. As a result, administrative responsibilities are shared by the Federal Government, State departments of education, and local educational agencies.

At the Federal level, funds are distributed in accordance with the statutory formula, regulations and guidelines are developed and disseminated, and State annual program plans are approved. The program is monitored through annual program reviews of State departments of education and onsite visits to Title I programs in a limited number of school districts. Technical assistance is provided to State departments of education through onsite visits, national and regional conferences, dissemination of materials, and participation in State conferences of school superintendents and Title I coordinators. Fiscal and evaluation data are compiled and the results and effectiveness of the program are evaluated.

State departments of education suballocate county aggregate grants to local school districts; approve Title I projects; disseminate program information throughout the State; provide technical assistance to local school districts; monitor programs in operation; maintain fiscal records; and prepare fiscal and evaluation reports.

Local educational agencies identify the school atttendance areas with high concentration of children of low-income families, identify the educationally deprived children, assess their needs and design and establish projects to meet these needs. Fiscal and evaluative reports are furnished State departments of education.

Federal activities, excluding evaluation and the admnistration of the State Agency Program for Handicapped Children, are carried out by an authorized staff of 72 positions. In addition, 10 regional program specialists located in the 10 HEW regional offices have been assigned to Title I. Resources for travel and printing vary from year to year and are dependent on total resources available to, and the priority needs of the Office of Education.

Data collection activities necessary to determine Title I allocations are shared by the Office of Education, the National Center for Educational Statistics, and the Social Security Administration. The National Center is responsible for compiling the data and computing the allocations at the county level.

Allocations for fiscal year 1978 were announced in April 1977. This was the earliest date States were notified of Title I allocations during the entire life of the program. The allocations would have been announced earlier except that eight States were delinquent in submitting their expenditure, AFDC, or foster children data. Plans call for 1979 allocations to be announced by March 1978.

Program reviews began on a consistent basis in 1971. These program reviews are conducted by teams of two to four people and are of 1 week's duration. Administrative activities of State departments of education are reviewed and onsite visits are made to LEAs and one institution for neglected or delinquent children to review

Title I programs in operation. About 300 LEAs and institutions are visited each year. Technical assistance is provided to SEAs and LEAs during the course of the reviews. Reports of the findings and recommendations for improvement or necessary corrective action are sent to each State upon completion of the review.

In the early years of such reviews, numerous program areas in which SEAs were experiencing difficulties in the administration of Title I were identified. To strengthen the leadership and stewardship capabilities of the 57 SEAs to administer Title I, a variety of program development activities were undertaken. The thrust was to provide training, and training materials to SEA staff to use in training LEA staff.

Materials included information on: target area selection; desegregation; comparability; parental involvement; needs assessment; private school children involvement; evaluation; dissemination; accountability; common characteristics of successful projects; and other topics. A series of publications, designed to be illusrative, informative, or explanatory relative to legislative requirements, were also published. These publications are oriented to a large extent to the public. In total, 26 program support packages, 11 handbooks and 8 publications including one or more case studies were disseminated. In addition, self-analysis instruments for SEA and LEA management of compensatory education programs were developed under Section 505, Title I, ESEA, in cooperation with 7 States and 14 LEAs.

STATUS OF REGULATIONS

The operational regulations applying to the LEA grants are those which were published in the Federal Register on September 28, 1976. These regulations do not take into account the waiver of the maintenance of effort provision authorized in the Education Amendments of 1976. A Notice of Intent to Publish Regulations has been issued to establish criteria for such waivers under "exceptional" and "very exceptional circumstances." A considerable number of comments were received and these have been taken into consideration in the development of proposed regulations which will be published in the near future. The criteria to be included in the proposed regulations for Title I will be, to the extent possible, consistent with those established for Title IV, ESEA.

The September 28, 1976, regulations established, in one part, requirements applying to all programs authorized by Title I and established separate parts for the unique requirements of each program.

Part 116a, which covers the LEA grant program, included changes made necessary by the Education Amendments of 1974, such as:

The establishment of school parent advisory councils;

The eligibility of target schools for a 3-year period and for a 30 percent concentration of poor children; and

A bypass to provide for the participation of eligible nonpublic school children.

Other major changes included: more flexibility in the identification of target schools by permitting school districts to have separate ranking by school levels; and a new division of schools by size for LEA reporting on comparability of services.

ELIGIBLE NONPUBLIC SCHOOL CHILDREN

The bypass provision in the Education Amendments of 1974 authorizing the Commissioner to arrange for the participation of eligible nonpublic school children in Title I services has added an additional responsibility in the administration of the Title I program.

The bypass provision was implemented for the first time in fiscal year 1977. By contract, the Commissioner arranged for Title I services to 1,679 eligible nonpublic school children in four school districts in Missouri. Arrangements are curently underway to contract for services to about 1,200 children in Virginia. There is a possibility that arrangements will also be initiated to serve eligible nonpublic school children in approximately 100 additional school districts in the States of Missouri, Virginia, and Wisconsin during the balance of this fiscal year.

COMPARABILITY

Local educational agencies are required to submit reports to their State educational agencies showing that State and locally funded services in project areas are comparable to those in nonproject areas.

A study by the Division of Compensatory Education of 5,939 school districts which submitted comparability reports in both fiscal year 1972 and 1973 revealed that the first year 44 percent of the reporting LEAs did not offer comparable services with State and local funds at Title I and non-Title I schools. No local educational agency actually submits a full comparability report unless it has schools serving nonproject areas with which its Title I schools can be compared. Under the revised regulations the schools in an agency's grade group—for example, kindergarten through grade 6—may in most cases be divided into smaller and larger enrollment groups.

Consequently, comparability reports are required for Title I schools only when there are non-Title I schools at the same grade levels and in the same enrollment bracket. Many local educational agencies have small enrollments and no more than one school for a grade group. Of the total LEAs required to submit comparability reports in the fall of 1976, 172 failed to demonstrate comparability as of the prescribed date and were, therefore, required to make adjustments in their staff or enrollments. Of these LEAs, 158 submitted revised reports by December 1 and, hence, suffered no suspension of authority to obligate Title I funds. No LEA had its application finally disapproved because of failure to submit a revised report by March 31.

The reporting of data to prove comparability based on expenditures for materials and supplies, and the reporting of data on salary payments for longevity have been dropped from the regulations. Also no data are required by schools with enrollments of 100 or less. These deletions and the provision for grouping schools by size of enrollment have reduced reporting burdens and put the achievement of comparability on a more equitable basis.

STATE COMPENSATORY PROGRAMS

There are 17 States which currently have compensatory education programs.

Specific information regarding funding levels, funding mechanisms and district eligibility critertia, district program requirements, services provided and administration are included in the NIE report on the "Administration of Compensatory Education."

No major program problems have been identified concerning conflicting requirements between Title I and State compensatory education programs except those relating to comparability, and the supplement but not supplant provisions.

For school districts in those States whose State compensatory education funds could be used in non-Title I schools the comparability requirement of Title I created problems, since the average expenditures increased and instructional staff-pupil ratios decreased in the non-Title I schools to the point where comparability could not be achieved for each Title I school.

The Education Amendments of 1974 authorized the exclusion of comparable State or local programs for educationally deprived children from determinations of compliance with the comparability requirement of Title I. As stated in the NIE report, this exclusion made it possible for LEAs to use State compensatory education funds in non-Title I schools without being penalized for failure to achieve comparability.

A conflict still remains, however, with the use of State compensatory education funds in California with respect to the supplement not supplant provision of Title I, which requires that Title I funds are added to, and are not used to replace, State and local funds used for the education of children participating in Title I programs.

This provision has been recently interpreted by the United States District Court for the Northern District of California in the case of *Alexander* v. *Califano* in granting a partial summary judgment. In this case, the Richmond Unified School District distributed its State compensatory funds and Title I funds among Title I eligible schools which had the highest concentration of children from low-income families and State compensatory funds mainly in non-Title I schools.

The court concluded that children eligible for both California State compensatory education and Title I funds are penalized in the sense that they receive less from the State program than they would receive from it in the absence of Title I funds.

The court did not require the school district to make any change in the manner in which it distributed its State compensatory education funds until fiscal year 1969. The State of California is appealing the case.

In the case of audits, auditors specifically commented to us, as we conducted our research, that they were now no longer confident or happy about even investigating these areas because of confusion, and the lack of clear signals they were receiving from the Office of Education.

Chairman **Perkins**. On page 72 of your report, Dr. Hill, you conclude that any loosening of the Title I requirements that Title I children receive the same amount of educational services provided through State dollars as non-Title I children, would penalize educationally disadvantaged children in poor areas.

Now since the State of California has requested such a change, could you elaborate on your statement?

Dr. **Hill**. Mr. Chairman, if I understand the problem correctly, it is that the State of California operates on the notion that the best way to serve educationally disadvantaged children is to increase overall expenditures for all of the children in the classrooms in which those educationally disadvantaged children are educated. That may be an educationally valid approach, but it is different from Title I's principle that special services must be delivered to individual educationally disadvantaged children.

If Title I were to withdraw its guarantee of service to individual children in favor of letting States and school districts spend Title I funds for general upgrading of schools, there would be no possibility of vertifying that Title I funds were used for disadvantaged children. Given the need that every local district has for general purpose funds, there is a high probability that Title I would lose its distinctiveness and children now served by it would lose services.

The case in California is an extremely complicated and controversial one. California is spending a tremendous amount of its own money on education, more than any other State. California's bringing its overall spending level up to the point where it may be possible that federal funds could be used for general aid without barring educationally disadvantaged children.

The problem the Federal Government faces is what happens if you waive the requirements that are needed in most places in order to accommodate California's unique situation.

I don't think we have a solution to this. California clearly has a point. But the general national picture is such that if all of the States were allowed to operate as California wants to, it is very likely that Title I services would not be special as they are now.

Chairman **Perkins**. You mention in your statement that Title I allocations will be announced by next March, Dr. Minter. The Commissioner has also made a similar commitment. Since we have all been concerned about the late notice and receipt of Title I funds by local school districts, could you tell us what you are doing exactly to carry out this pledge, whether you can get those allocations announced in February, or by the latest, by the lst of next March? We had hoped you could announce them in February.

Dr. **Minter**. I know you know that we gather those statistics from a variety of sources, and starting with the county funds and then proceedig through the State departments of education.

We have developed a timetable which calls for collecting those materials and that information in an orderly fashion and I believe the timetable calls for having all the material in by the middle of January. However, we have been told by NCES, in informal conversations, that it will take approximately 2 months to complete the tabulation and the leading to the promulgation of the final tables. Therefore, we do believe we are acting with dispatch and not making promises that we will not be able to carry out by setting a date of, hopefully, between mid and the end of March.

Chairman PERKINS. Perhaps the Office of Education should announce ahead of time the cutoff date for the SETA data so there would be no delay of you could do that easily, could you not?

Dr. MINTER. Yes, sir.

Chairman PERKINS. That would expedite this situation considerably.

Dr. MINTER. Yes.

Chairman PERKINS. Will you do that in the future?

Dr. MINTER. Yes, we will.

Chairman PERKINS. I think you can get your allocations announced by February 1st if you do that.

Mr. Miller, I will ask you to preside.

Dr. MINTER. Mr. Chairman, may I expand a little bit, please, on your request for a cutoff date? It is possible to set a cutoff date. However, as you know, the final table consists of entitlements for all of the States and the outlying territories and if any one State is left out of that chart, even though it has not met the cutoff date, it may cause unnecessary penalties.

Chairman PERKINS. I can well understand that. Of course there must be some flexibility along those lines, but, in general, it will indicate a good faith effort if you will establish that cutoff date.

Mr. MILLER. Mr. Hill, I don't quite understand your answer unless you are suggesting that you have a legal problem. Is that what you are saying? You are suggesting that California may have a valid educational position in terms of services that may be received by the children and yet you find it difficult to embrace that because if you were to embrace that position, therefore, even in those States that did make an effort such as California has made, something bad would happen.

Are you telling me if you waived the rules—if that is within your power—with regard to California, that, therefore, you would be compelled to waive the rules in regard to every other State where they had not made the same effort in compensatory education or spending that California did?

Dr. HILL. No, I am not saying that.

The Title I program is now based on the premise that services should be delivered to an identifiable group of children. In general, we feel that that orientation is necessary, given the needs that school districts have for general purpose money.

In California, several of the State programs are also based on that idea. But one program in California, the ECE program, which is a program of aid to every classroom, does not fit that model and it does contradict Title I in its basic assumptions.

If every state used Title I funds according to California's ECE model, the distinctive and identifiable nature of Title I funds would be lost. It is possible to assume that California may be able to run a

REPORTS ON AUDITS

There have been 190 audits of Title I by the HEW Audit Agency and GAO since the program began in 1966. USOE has resolved 135 of the 190 audits; 25 have been accepted for decision by the Title I Audit Hearing Board, and the remaining 30 are at various stages of resolution. Three of the latter were issued in 1975 and the remainder have been issued since January 1976.

Auditors recommended recovery of $274 million, $174 million during the first 5 years of the program, and about $100 million since then. More than 50 of 190 audits made no recommendations for financial recoveries.

Ninety seven million dollars (35 percent) is represented by two audits: one recommending recovery of Pennsylvania's entire $49 million fiscal year 1966 allocation and the other recommending recovery of $48 million from Puerto Rico for expenditures during the first 4 years of the Title I program.

Fiscal Year 1966-Fiscal Year 1970. The recovery recommendations were not upheld by USOE. In addition among other audits USOE did not uphold audit agency recommendations of more than $50 million (18 percent) because existing law and regulations did not justify recovery action.

USOE has supported recovery recommendations for $62 million (22 percent) of the total. About $3 million of that amount has been recovered through repayment or appropriate financial adjustments. Recovery of approximately $16 million is barred by a 5-year statute of limitation. The remainder is subject to either collection or modification through the Title I Audit Hearing Board appeal process.

Recovery action was not pursued on ($24 million) primarily because of acceptable corrective action or acceptable justification by the State.

More than $41 million is represented by 15 audit reports on which administrative determinations have not yet been completed. $16 million of the total involves four "comparability" audits; $24 million is in six audit reports not yet finalized by HEW/AA, and $1 million is in the five remaining audits.

Two major problems exist in the resoltuion of audits: the severity of the penalties imposed, particularly with respect to comparability audits; uncertainty on the part of States and school districts as to what constitutes supplanting State and local funds with Title I funds; and findings in the audit reports which are based on presumptive criteria and for which local school districts no longer have available records with which to rebut the allegation before the Title I Audit Hearing Board.

The Commissioner of Education has already taken action to eliminate these problems.

(1) A policy recommendation has been made to the Secretary relative to a change in the policy of the measure of recovery in post-expenditure audits of comparability violations.

(2) Principles of the policy on supplement/supplant will be restated and clarified and by February 1, 1978, proposed interpretative rules will be formulated for publication in the Federal Register.

The Commissioner has also taken action to have a draft manual prepared of interpretative rules, directives, requirements, guidelines, and illustrative examples. This is in response to the NIE report on administration which points out that while the regulations are consistent with the statutory provisions, they lack sufficient clarity for the use of States and local school districts and may have contributed to a lack of flexibility in program design and implementation of Title I programs. The Title I program has been evaluated and its administration has been studied more extensively than any other education program.

It is my considered judgment that, while improvements can and should be made in the administration of the program to overcome any weakneses that have been noted in the studies, the program is being adminsitered by dedicated people at the Federal, State and local levels whose goal is to carry out the congressional mandate to improve the education of educationally deprived children.

I will be pleased to answer any questions that the committee may have.

Chairman **Perkins**. Let me thank you for an excellent statement, Dr. Minter. We will withhold questions for the time being.

I understand that Mr. Philip Kropatkin has no prepared statement, but is ready to answer any questions as Deputy Director of the HEW Audit Agency; is that correct?

Mr. **Kropatkin**. That is correct, Mr. Chairman.

Chairman **Perkins**. I would like to ask, Dr. Hill, in your report on page 25, you state that the level of OE monitoring and enforcement has declined significantly in recent years.

Could you expand on that statement especially as regards the supplement and not supplant employment?

Dr. **Hill**. Mr. Chairman, let me make a brief response and then ask Dr. Burnes, to my left, to amplify.

The finding was that OE program reviewers going into the field had been discouraged by the ambiguity of the standards for verifying that Title I services are supplementary, to the point they avoided looking at supplanting when they went into the field. The main contention, then, is that, though the level of field review may have fallen somewhat, within each field review, the concentration on the supplementation issue has fallen.

Let me ask Dr. Burnes to amplify that.

Dr. **Burnes**. Mr. Chairman, in looking at Federal efforts to monitor these provisions, we tried to look at several of the different activities that the Office of Education and other parts of the Department typically undertake. We looked at Program Review activities conducted by the Division of Education for the Disadvantaged. We also looked at audits, conducted by the HEW Audit Agency. In the case of Program Reviews, we found significant reductions in allegations of malfeasance on the part of districts.

For example, we found from 1971 to 1977, a significant reduction from approximately 200 allegations in 1971, to 11 allegations in 1977, based on findings of program review teams in the field.

thorough program for all of the students including the disadvantaged ones under its model of serving all the classrooms, but we can't guarantee that. We certainly can't be sure that would be so if other States with less of a history, of support for education did it.

If the question of a waiver to the State of California comes up, two issues have to be considered. One is the internal California issue, that is, will giving California such a waiver do any harm to children within California? The other issue is, can a waiver be given to California in such a way that the Commissioner of Education would be able to resist requests from other places which may not have as much support for education?

My view is a staunch belief that that is a difficult problem and I don't mean to say that I know there is any one solution, but I do believe that a precipitous decision to give a waiver to California would be premature. The problem of guaranteeing the proper use of Title I funds nationwide has to be considered as well as the problem of giving California some credit for its major investment in compensatory education.

Mr. MILLER. I want to get back to your response but Mr. Kildee has a question.

Mr. KILDEE. Dr. Minter, just one question before I leave for another committee.

How large a staff would the division which administers Title I need to do a really effective job?

Dr. MINTER. We have thought of that question over a period of time. We believe that we could move one third or one half more of the staff we presently have in order to do an effective job, making site visits and monitoring States throughout the country.

I might say that the program, at the program level, and even at the office level, we have requested consistently a larger staff than we have been allocated over a period of years. There have been work measurements supplied to our allocation analysts for other determinations, but we are by no means satisfied with the number of staff that we have.

You will be interested to know that we have requested 20 additional staff in the 1979 budget, the budget for fiscal year 1979. Whether or not that will be totally granted, we don't know.

Since becoming deputy commissioner, I have moved seven people from the immediate staff of the deputy commissioner into the Title I program and we expect that move to be consummated certainly by the end of this week or the next. They have already been detailed to the Title I program.

Mr. KILDEE. If additional personnel were assigned to Title I, how would you use these personnel?

Dr. MINTER. I think the greatest need for personnel, as I understand it—and I will refer this to Dr. Rodriguez for further answer—but as I understand it, the additional staff is mostly needed for monitoring visits and for technical assistance.

Dr. RODRIGUEZ. There are two major program areas which in addition to the LEA grant program do need additional staff and those two areas are for the migrant program and the neglected and delinquent program. This is not to say there is sufficient staff with regard to the LEA program. Additional staff are needed there as well.

Mr. **Kildee**. That is all, Mr. Chairman.

Mr. **Miller**. Thank you, Mr. Kildee.

Mr. Hill, we keep talking about this waiver. Did California ask for a waiver?

Dr. **Hill**. Mr. Chairman, to my knowledge, there has been no formal request. There has been a lot of discussion informally.

Mr. **Miller**. Informally what are they doing?

Dr. **Hill**. Informally the State of California is advocating a waiver of regulations to permit the use of Title I funds along with other sources of funds for general improvement of classrooms in all the schools.

Mr. **Miller**. Their theory would be that, because of our compensatory education program that we are now putting sufficient resources behind the education of each one of those students, that to simply pile on additional resources would give you diminishing returns and therefore they should have some flexibility to move it around the district?

Dr. **Hill**. I think a little refinement of that is in order. As I understand it, from informal discussions with people from the State of California, the State education agency believes that a general improvement of the educational services provided in every classroom is the best way to serve disadvantaged children. That is in contrast to the other belief that the best way to improve the services for educationally disadvantaged children is to serve them individually and to verify that they individually get special services.

Mr. **Miller**. You get caught up in the case that I think California would make and that other people have made here. You may have 75 to 80 percent of the school's Title I eligible, but would you not be able to render service to the 25 or 20 percent who would be ineligible?

Dr. **Hill**. I would have to refer that number to my colleague from the Office of Education. There is a point at which a school can be completely served if its proportion of Title I eligibility is very high. I don't know what that point is.

Mr. **Miller**. All the examples we have been given in the last few weeks is the opposite, that the money goes to the students who are eligible, and in desegregation you have had problems. Where you have brought in previously Title I schools, you have to separate those.

What is the case? Is there a threshold for 75 percent to serve all?

Dr. **Hill**. Apparently I am wrong.

Mr. Chairman, the point that you are making, though, is that the premise on which Title I is founded both in the regulations and the statute is now that educationally disadvantaged children are to be served individually.

Mr. **Miller**. I am not here to carry California's water, but I think they raise some very serious questions in light of the same kinds of questions that have been raised in other parts of the country. That is, if there has been such a change in circumstances in regard to educational resources, don't you have to take that into account or do you ignore those?

Title I was based upon the fact there were students educationally and economically disadvantaged who lived in certain parts of school districts, either in core cities or what have you, who were ignored by school boards and taxpayers because of racism or any other reasons and that therefore the Federal Government had an obligation to come in and try to equalize or at least not even reach the point of equalization, but put some resources and direct and mandate that resources be put behind that child's education.

Now the question is: In a State like California where they made dramatic efforts in equalization in compliance with the court decision and where they have compensatory education even prior to the Seranno decision, is there such a change in circumstances that ought to require that the Department of Education take another look at it or are you still saying since we did this in 1965 it is valid in 1978? I think that is the question.

Dr. HILL. I think you defined the question. I can't say how you decide whether there has been a sufficient change in circumstances. I think it is important to remember that while California is spending a great deal of money on its compensatory education program called Educationally Disadvantaged Youth, on its general aid program, ECE, the California schools are very well funded. Schools in other States like Ohio——

Mr. MILLER. Wait a minute. You don't do that. The question is, at some point and while many people have argued in front of this committee that it is very difficult to jump from student to student evaluation in following the money to a simple school, don't suggest to me that the Department of Education can't look at California on the merits and cannot make a different finding about Ohio, New Jersey or Florida or anybody else unless you tell me you are precluded by the law and then that is our job to change it.

Dr. HILL. That is where I was going. The law is very clear and does not include flexibility State to State. The Office of Education has not received nor has it considered a waiver because it doesn't have the authority. In fact there was a special waiver for State compensatory education programs written into the law the last time. That waiver does not extend to the ECE program which is a general aid program. It only extends to programs which provide individually verifiable services to educationally disadvantaged children.

No one in the administration has any authority to make waivers. Congress can certainly decide that the case of California is strong enough for such a waiver and also believes that the Commissioner of Education could withstand the pressures from other States that perhaps are not as deserving.

All I am trying to say is that the national implications of making such a waiver must be considered as well as the local ones.

Mr. MILLER. What does the Department think? Do you think there has been such a change in circumstances that the Congress ought to allow that kind of leeway and hope we have a Commissioner strong enough to beat down people who are not as deserving, as you would say?

Dr. HILL. I must say that we have not tried to assess exactly what the threshold is when it is time to make a waiver. We don't know. Obviously the political pressures on the Commissioner would be such that more than just a wish that he be brave is necessary.

Mr. Miller. I really appreciate the political pressures. It is not just that our delegation is made up of 43 people in the House and I am sure New Jersey and New York are adequately represented also, and other States. But my concern, and I don't believe you are advocating this, but my concern is that we are not here to protect the Commissioner of Education from those kinds of pressures if in fact the case can be made that greater flexibility in terms of meeting the educational needs of these children is necessary.

Flexibility the last eight or nine years has taken on rather important connotations in terms of what in fact has really happened. But it would seem to me that you have to reassess and to say that because districts and States at one time were not spending but now they are, but you are not prepared to say whether that defines such a change in circumstances to which you can give this kind of flexibility is a little bit of hiding your head in the sand because I think you have to look at it.

I don't know what the threshold is and clearly dollars alone don't make for a good education as some people from the City of San Francisco would show you, that dollar resources alone aren't going to do it.

But I think you have to have that ability to assess that situation. If the State is making that kind of overwhelming effort, you have to treat them in good faith. If a State comes to you and asks for a waiver and they are not making that kind of effort, I don't think you can treat them in good faith.

There are clear distinctions that people ought to be able to make and that the law ought to allow for. If you think that is too lenient in light of abuses or something in the past, that is one thing.

Dr. Hill. I would like to contribute one more fact. The way you defined the issue is correct, it is an issue that Congress can resolve and nobody else. NIE did not make judgments about the necessity of Federal regulations from theory. Many of our judgments came from discussions with the people who run State compensatory education programs. In fact, we held conferences with all the people running State compensatory programs. In general, almost without exception, the point of view of those individuals was that the Title I legal framework as it now exists, including the guarantee of services to individual children, was necessary for them to be able to maintain the State compensatory education programs.

The State of California did not take a position on that, but I think every other State did. I hope it is clear that we are not just operating from theory. These are the professional opinions of the people who work with the programs everyday.

Mr. Miller. I appreciate that. Thank you.

Mr. Minter, what is your view on what appears to be the California view of how you might deliver a first-rate education to Title I eligible children, that they ought to be part of a larger class or they ought to be treated individually?

Dr. Minter. My view would be that we do want to reserve the concentration formula and the targeting of the monies on educationally and economically deprived children and then target the monies on those who have the greatest educational deprivation.

In reading the lawyers committee report I think they point out that there is a certain amount of flexibility and maneuverability for States that have compensatory education programs. The same was pointed out in the NIE report.

I have not at this point made a study of all the possible ways that California could move to continue its great contribution to compensatory education and at the same time not conflict with the mandate to target on economically deprived children.

Mr. **MILLER**. Do you think that there is a threshold level in terms of the population of the children at which all students could be served, if the school is 75 percent made up of Title I eligible children, that you would serve them all instead of trying to segregate them out?

Dr. **MINTER**. That would violate the law as it is presently written.

Mr. **MILLER**. The reason we are here is we are talking about rewriting the law.

Dr. **MINTER**. Yes. I have a general fear that we, short of full funding and as long as there are scarce resources, that the temptation, however well meaning officials may be, that the temptation is to spread the monies more broadly but at the same time the result will not be to target the monies on economically deprived children.

I believe the fifth report in the NIE series does speak to the need for the intensity of the instructional program. I believe the report, if I am quoting it right, indicated that in States, some States that had additional compensatory education programs, the monies were spread more broadly over larger numbers of children, but the intensity of the instructional programs was somewhat diminished, that is, the amount of time in compensatory education.

Mr. **MILLER**. I have some problem with that because I just don't believe that we are dealing in absolutes here when you take a group of any children and are trying to impart some knowledge and experience to them. It would seem to me that given whatever resources are necessary to do the accounting of trying to separate these children, I think of some of the schools I know where the number of ineligible children is so small that for the administration to worry about it it seems to me almost to be ridiculous.

I appreciate the abuses. I have a school district in my congressional district, Richmond, which is under a lawsuit right now. I can appreciate what has happened, but I can also appreciate from many other school districts that I have visited where you can count the number of Title I ineligible children on one hand. To fool around and suggest that this is somehow going to diminish that program, I can understand that when the threshold is 50 percent, but when you say the threshold is 80 or 90 percent even, it seems to me again there is some element of good faith that has to be understood here.

Again, I go back to a State that has made an effort at equalization and made an effort at compensatory education and that kind of consideration.

Dr. **MINTER**. We don't by any means, sir, mean to make our requirements so stringent that States have a disincentive to support compensatory education programs, but as we have indicated, the law is the law.

Mr. **MILLER**. I appreciate that.

Mr. Quie?

Mr. QUIE. Thank you.

Before I get started, let me say that not only am I interested in your line of questioning, Mr. Miller, because I hope we can amend this Act so that when a State reaches the point that it has in California, obviously competent to assume much more responsibility in administering this program, that we ought to permit them to do it in the way that they have developed the capability of doing it. There is no way we can understand on a national level exactly how a program ought to be administered to the best interests of the students in that State.

I would also hasten to add that there are some States that I would not want to do that with as yet. But from what I observed of California, I certainly hope we can give the flexibility to the legislation to move along the line that you seem to be suggesting in your questions.

What has bothered me through the years involved is the decision on who the target schools will be, which schools will be target schools. In the criteria laid out in the regulations, assuming that we are going to continue to distribute money to schools based on low income rather than achievement, to what extent have you looked at this to find the most accurate means of distributing the money where the largest amount of educationally disadvantaged students live by using these factors in the regulations?

I guess I am bothered a great deal by using free lunches as an example, being a very good way of identifying who is educationally disadvantaged and who is not.

Out of your studies have you come up with a more clear way that we can do it and to what extent is this really decided by USOE and to what extent is it really decided by the State Department of Education and what voice can a local school district make in the distribution of money?

Dr. HILL. Mr. Chairman, I would like to give the microphone to Dr. Rotberg for a minute to ask her to discuss two studies we did which reflect the problems of district allocation.

One is in our current poverty report which discusses subdistrict allocation procedures and talked about the practices now used to target school districts. The other was a demonstration project we conducted in 13 school districts.

Dr. ROTBERG. In the first study, the study of current allocation practices within districts, we found that the regulations permit a great deal of flexibility in allocating funds within districts. Districts use a variety of different measures to select their eligible schools and students. In fact, on the average, districts are currently serving approximately two-thirds of their schools.

In the demonstration projects in the second study, about half of the districts are serving all of their schools. These districts feel that their low achieving children are fairly evenly distributed throughout the school system and that they can reach these children more effectively by serving all schools.

In two other demonstration districts, the districts ranked their schools by achievement rather than poverty, and selected the lowest achieving schools to receive services.

We have also found that there is a great deal of variation generally among districts in the extent to which low-achieving children are concentrated in the poorest schools. In some districts the schools with the highest proportions of low income children are also the schools with the highest proportions of low achieving children. This is particularly true in the large cities.

In other districts, for example, some of our demonstration districts the schools selected by achievement criteria are not always the schools that would be selected by poverty criteria.

Thus, some districts both the poor and low achieving children are pretty well distributed throughout the system. In others they tend to be more concentrated in certain schools. Because of funding levels, there are many unserved low achieving children in school districts; these children are both in current Title I schools and in non-Title I schools.

Mr. QUIE. There is a difference in the regulations of where you use the ratio of low income families and attendance area should be at least as high as the area of low income. But if any school attendance area has at least 30 percent or more of low income families, they should be counted, but there you determine that on the free lunches.

In another part of the regulations you use all the children who may receive assistance under the School Lunch Act. That includes both free and reduced lunches. What I am asking is: How does the difference in the regulations, depending upon what you are looking for, fit into the selecting of target schools?

Dr. ROTBERG. You are speaking of the current flexibility and the kinds of measures that can be used?

Mr. QUIE. Yes, that is right, because if you are talking about free and reduced cost lunches, you are taking a different group of kids. The DESMA study indicated that the higher income you go, the more likelihood there would be a higher percentage of poor kids who are also low achieving kids.

As I recall, you got to 150 percent of poverty and then there would be about half of those low achieving who would be poor and about half of those who were average or above the poverty level. Of if you go up to 200 percent which is about where the reduced cost lunches are, then you really have reversed it around about 35 percent to the low achievers or nonpoor and about 65 percent are poor using the 200 percent of poverty.

Now in the present regulation you use the FDC in one way or information on low income families, and in another way free lunches when it goes to the 30 percent of those who are available for free lunches or for aid under the Act which is free and reduced cost lunches.

It seems to me there is an awful lot of flexibility. There ought to be a lot of uncertainty. I wonder who makes the decisions as it goes along? Is there a way that the local school district can make some of those changes or is it totally done within the State department of education so you have uniform criteria throughout the whole State.

Dr. ROTBERG. In many cases, the school district decide what measure of poverty to use in selecting schools. Once a measure or combination of measures has been selected, the district is supposed to apply it consistently across all schools.

However, our research suggests that this is not always the case, and that some distincts may be using different measures to select different schools. In addition, the regulations permit a great deal of flexibility in the kinds of poverty measures that are used. Whether school districts continue to use poverty criteria to select their schools or change to achievement, the procedures could be tightened up.

Mr. QUIE. Let's just talk about poverty and not get into the educational achievement part of it. Have your studies indicated what means of determining poverty comes the losses to being the way of identifying who is a low achiever?

Dr. ROTBERG. No, we have not.

Mr. QUIE. Is there a difference in communities, for instance, using free lunches, whether it is a good means of identifying or not?

Dr. ROTBERG. Are you asking whether free lunch is a good means of identifying low achieving students?

Mr. QUIE. Yes. Let me tell you, talking to some school superintendents, they say that people who are not poor at all are claiming they are, they sign an affidavit that they are poor and ought to get free lunches. In other communities the superintendents tell me that people won't do it, they have too great a pride, they tell me, to get free lunches.

We saw earlier on, using information on welfare, that in California in a heavily Chicano attendance area a much smaller percentage has come through and one of the reasons is that they may be children of illegal aliens and therefore don't come under welfare.

Those are the things that I wanted to find out. Have you discovered any way, if we use poverty, what would be the most efficient way of identifying the people we want to identify?

Dr. ROTBERG. Free lunch counts are inconsistent in those districts where certain schools are more likely to use the program than others. This difference among schools makes it more diffcult to apply a consistent standard to select eligible schools.

However, it should not in itself make it more difficult to select low—achieving children accurately, since the children themselves are selected by achievement criteria.

Mr. QUIE. What if we went, instead of a formula for distribution among States of those who are below the Orshansky formula when the census was taken and AFDC above current Orshansky, and divided it up among chidren eligible to receive benefits under the School Lunch Act?

Dr. ROTBERG. Can I ask you to repeat the question?

Mr. QUIE What if instead of using the present formula, we shifted it to take from the regulations the number of children eligible to receive benefits from the National School Lunch Act?

Dr. ROTBERG. Are you referring to the distribution of funds to States?

Mr. QUIE. Yes, distribution to States and then, of course, it would be the one that would be used to allocate to school districts within the States as well.

Dr. ROTBERG. Let me ask Dr. Hill if he would like to comment on that question.

Dr. HILL. Mr. Quie, Table 27 in our report on the current funds allocation system, on page 62, bears on this issue. It compares free lunch, AFDC, and Census Orshansky counts with respect to which schools they identify as being eligible for Title I.

TABLE 27.—PERCENT OF SCHOOLS INELIGIBLE UNDER ONE CRITERION BUT ELIGIBLE UNDER EACH OF THE OTHERS

	Eligible Under		
Ineligible Under	*Census*	*AFDC*	*Free Lunch*
Census	0	13.9%	14.7%
AFDC	6.7%	0	11.2%
Free Lunch	10.3%	14.0%	0

There is an obviously considerable overlap among the three measures. Any two measures overlap more than they differ.

As you may know, in our study of the current allocation system we did look at several alternative poverty definitions and concluded that most of the technical changes in the poverty definition that have been proposed are simply in effect upward scalings of that definition, and identify more people as being poor. The numbers of poor increase, but the proportionate distribution among States would not be affected much by the technical changes in the definition.

Mr. QUIE. Have you done that so you can show us?

Dr. HILL. We have done it with respect to many definitions, not the simple free lunch count definition. One reason we did not do that, of course, is that free lunch eligibiity is a rubber yardstick. It depends on whether parents apply, and on income estimates made by local people.

Mr. QUIE. But I didn't ask about free lunches. I asked about those eligible to receive benefits under the National School Lunch Act which I understand means both free and reduced cost lunches. If you talk about free lunches, I guess that is 125 percent of poverty. If you go to eligible for the National School Lunch Act, then you are talking about 195 percent of poverty.

Now if it doesn't make any difference, it is hard for me to fit that in with the DECIMA study which indicated if you go from current poverty to 200 percent of poverty, you relly have turned it around to where, using current poverty, 33 percent of the low achievers are poor. If I recall, if you go to 200 percent, then about 65 percent of the low achievers are poor which does make a big difference it seems to me.

Dr. HILL. Mr. Quie, I am not overly comfortable discussing the DECIMA study since we did not do it. What I was trying to say is the allocation of funds among places is similar as far as we know, no matter which of several poverty indicators you use. Clearly, if you select the poverty indicator that identifies more people as being poor, that poverty indicator is also going to identify more people as being low achieving. I don't find that to be a surprising result.

Mr. QUIE. What I would like to find out is how that fits each State because if we move from the census information to AFDC, it has a dramatic change per State. That is why I would be interested in finding out about the free and reduced cost lunches.

Dr. **Hill**. Mr. Quie, the reason I claim to you that free and reduced cost lunches are a rubber yardstick is not that the standard for eligibility is not set by the legislation which it is, but the judgment on an individual child depends on the parents' application and local educator's judgment. The only national uniform data about income is the census. Free and reduced cost lunch does not involve the survey of the family's income, it simply involves a judgment of the family's income.

Mr. **Quie**. And the census information disadvantage is that by the time you quit using it, there is nobody in school anymore who is counted?

Dr. **Hill**. The free lunch counts are imaginative but up-to-date and the census is standard but not up-to-date.

Mr. **Miller**. I think you were right about a formula for the universal school lunch program.

Mr. **Quie**. Looking through Maryland information, it is my understanding in the regulation that you don't count a school as a target school which has a smaller percentage of poor, no matter how you figured it, than the average in the school district.

Looking down through the Maryland information there are a number of school districts whose low count is less than the average in the school district. For instance, the districtwide average in the Dorchester school district is 21.2 percent, but the low target school is 15.5 percent.

In your studies did you find that this occurs in a number of places where they actually have a school attendance area counted as Title I which has a lower percentage of poor than the district average, and, if so, how do they pull it off?

Dr. **Hill**. It is possible under the regulations, Mr. Quie, for a school attendance area to be eligible if its number or proportion of low income children is higher than the district average. It is possible for a very large school to have a lower proportion than the district average, but a higher number than the district average of poor children.

So that fact alone does not convict that school district of violating the requirements.

Mr. **Quie**. If you look at Carroll County, then, it is the same thing. It is true of Alleghany County, it is the case in Calvert County, Carroll County and Dorchester, as I indicated, and Garrett County, Howard County, in Prince Georges County, Queen Anne's County, St. Mary's County, Somerset County, Calvert County, Wicomico County. Some of them are substantial amounts. I can't see how the numbers would relate.

Dr. **Hill**. Mr. Quie, I am not here to speak for those counties, but I do know that in addition to the difference between numbers and proportions that I mentioned before, that there are other elements of the regulations which could explain that. One of them is the no-wide-variance provisions which allow school districts which have an even distribution of poor in all their schools within some range to serve them all.

Second, there is a 3-year holdover provision where schools which were served in a given year can continue to be served for 3 years even if their student body composition changes.

The point on our report on that topic is that there are many good reasons for writing flexibility into the law, but the result is that the final district allocation process is so flexible that it is not standard in any way.

Mr. **Quie**. It is also interesting, however, that in some counties, then, a school attendance area that has, for instance, 4.6 percent poor gets money and another county, any below like here it is 24 percent or in the City of Baltimore, 33 percent, they can't get any money to help them.

It seems to me within the same State, if one school attendance area has only 4 percent poor and another one has 24 percent poor, that that 24 percent poor ought to be entitled to the money more than that 4 percent poor.

Our distribution, again, it seems to me, does not address itself adequately to giving assistance to the poor kids even if you are talking about a critical mass of the number that are there.

Dr. **Hill**. That is a result of the fact that Title I is allocated on counts and not proportions of low income children. Any criterion for eligibility of school districts would have the same effect unless it were based on a proportion of eligibles instead of upon a number. If children were counted according to low achievement, the same thing would happen unless you established a proportionate cutoff.

Mr. **Quie**. What struck me through the years is how quiet school people are about the distribution of Title I money. Here you have $2.6 billion and across State lines there is a vast difference between the school attendance areas, the amount of money they receive per eligible child and within a State also, the vast difference. For some that have large numbers of educationally disadvantaged children, they don't receive it and other ones do. Everyone seems to be rather quiet about it.

When we suggest changing it, all you really start is a hornet's nest. It reminds me of what I learned in college in public finance and that is that a bad tax that has been accepted is better than a good tax that has not been accepted yet. Maybe lousy distribution is better than distribution that has not been accepted yet.

How can a State make changes presently in the regulations of OE? From your studies have you found any possibilities going along the line Mr. Miller is talking about of a State making changes so they apply to them? Hasn't California tried it? I don't think they have been very successful, but is there some flexibility?

Dr. **Hill**. There is some. I would like to ask Dr. Burnes to discuss what that flexibility was.

Dr. **Burnes**. Mr. Quie, my understanding is that a State can add to the Federal regulations any State regulation that is consistent with the Federal regulations. We found a number of States which had in fact added additional provisions to the Federal legal framework. States have tremendous flexibility in adding regulatory provision, as long as they do not conflict with Federal oness.

Mr. **Quie**. Let's go back to California where they wanted to use their money to add compensatory education into a school attendance area that Title I was not reaching. As I understand it, they were prohibited from doing that. In Michigan they were able to do it. I would like to have you tell me how was Michigan able to use their State regulations to add on to Title I and get by with it that way and California could not?

Dr. BURNES. There are two different relevant programs in California, The Education for Disadvantaged Youth and The Early Childhood Education Program. I assume that you are inquiring about the latter. There, the primary issue deals with exemption from comparability for State-funded programs. The existing Title I Federal legal framework defines State compensatory education programs which can be exempted. One of those four criteria is that the children served by that program must be educationally disadvantaged.

California's Early Childhood Education Program does not specifically target funds on educationally disadvantaged children. As a result, it does not qualify under the existing Federal criteria as a State compensatory education program. Therefore, regulations in that State regarding that particular program are not consistent with the Federal legal framework. That is my understanding.

Mr. QUIE. So if they had targeted some way out of preschool children as being educationally disadvantaged——

Dr. BURNES. That is right. The Early Childhood Education Program is presently targeted on all children K-3. That program does not target funds specifically on educationally disadvantaged children. It targets them on all children in those grades. That, it seems to me, is the critical distinction.

Mr. QUIE. George, is that the way you understood it?

Mr. MILLER. That is my understanding, that the early childhood program is an across-the-board program with some direction given to individual school districts about how it should be used and how they split the money, but it is not solely for educationally disadvantaged?

Dr. BURNES. That is right.

[Material submitted for the record follows:]

California, in addition to its Early Childhood Education Program, has a state compensatory program, Education for Disadvantaged Youth. At the present time, some districts in California are experiencing difficulty in the relationship between EDY and the Title I supplementing and equitably provided provisions. As in the Richmond case, these districts are trying to distribute EDY funds specifically to non—Title I schools. This is inconsistent with both EDY and Title I regulations. EDY is supposed to be distributed to schools in rank order of educational deprivation; the school district cannot skip a higher—ranked school and give funds to a low—ranked school. Title I funds must be distributed without regard to availability of SCE funds, so as not to penalize educationally deprived children in poor areas. In Richmond, the school district took into consideration the existence of Title I in distributing state funds by skipping high ranked EDY schools which were also eligible for Title I.

Mr. QUIE. When there is a State program operating with Title I, do they have to send two teams of auditors to audit the State and Federal program or can they audit the two together?

Dr. BURNES. My understanding is that there is only one team of auditors that goes into a State. I am not sure whether auditors have specifically looked yet at the issue.

Mr. QUIE. When you say auditors that go into the State, are you talking about Federal auditors that go into the State?

Dr. BURNES. I guess I misunderstood you. I thought that was the thrust of your question.

Mr. QUIE. No. I understand the States have auditing responsibility in Title I programs out in the schools. Now here is a State that has auditing responsibility for the Title I money, but have their own compensatory education money out there which is run in some ways in conjunction with Title I.

Now do the State people have to send two teams of auditors out there or is one team of auditors auditing both programs?

Dr. BURNES. It is my understanding that at the State level there is one team that goes into a district and looks at both the Title I program and the State program.

Mr. QUIE. So the same team can be looking at both of them at one time?

Dr. BURNES. That is right.

Dr. HILL. It might be useful to say that States are quite different from one another about their State compensatory programs and some do not audit their programs. Others do have a system and almost all those that do monitor their programs rely on Title I staff and procedures. That is a major subsidy that the Title I program provides to many State programs, that the same staff are used to monitor and audit both Title I and State programs.

Mr. QUIE. Dr. Hill, what do you think of the lawyers' committee's recommendation to make the State compensatory education programs more compatible?

Dr. HILL. Dr. Burnes knows a lot more about that recommendation than I do.

Dr. BURNES. There are two major recommendations which the Lawyers' Committee has made with respect to the relationship between Title I and State Compensatory Education. We find that all of those recommendations have considerable merit. I think that they certainly deserve your consideration, also.

Mr. QUIE. Could you go through each recommendation, if you can recall them, and for the record give your views on each one?

Dr. BURNES. Some of the recommendations deal very specifically with the issue that we have been discussing in relationship to California. My recollection is that the Lawyers' Committee recommended two different kinds of approaches to the California kind of situation.

One concerns an exception from the Title I supplanting regulations. When the combined Federal and State allocation per Title I child reaches the level of funding which would be provided if Title I were fully funded, a district should be exempted from the supplanting regulation.

Turning to comparability, the Lawyers' Committee also recommended that serious consideration be given to defining certain kinds of educational programs in addition to state—funded compensatory programs, which, could be included in the comparability exemption.

They did not specifically recommend that other programs be included in this exemption. However, they did point out some of the problems. Their thrust was that, if a further exemption were to be considered, a program like ELE in California in which there is a very clear and concerted effort to restructure the educational program for all children based on individualized kinds of attention to those children might very well be considered. They, however, did not specifically recommend that California be given an exemption from this requirement.

Mr. QUIE. What is your reaction on that? Take New York, and while it is not to the extent that they have in California, at least they probably are equal with Michigan in effort, at least.

Dr. BURNES. Again, it seems to me that the most important issue is to be very clear about the conditions under which any State would receive an exemption or a waiver for such a program. I, too, am concerned that granting a waiver to a specific State without specifying the condition may become an open invitation for a number of States to request such a waiver. I think it is terribly important that, expanding the comparability exemption to non-compensatory programs only be done under carefully controlled and well-defined circumstances.

It seems to me that if the Congress, is very clear about the specific criteria, that such an expanded exemption might be conceivable.

Mr. QUIE. Thank you.

Mr. Chairman, I need to go, but I have a number of other questions. Could I ask unanimous consent that I submit the questions and that when they are answered, that we make it a part of the record?

Mr. MILLER. Without objection that is what we will do.

Thank you very much.

[See Appendix 5.]

Not to dwell on a point, but to dwell on a point, on page 7 of your statement you indicate that there is currently a division within the Office of Education about whether or not funds should follow with the student or go to the school. There have been inconsistent signals given. While generally you have found the legal framework, as you have stated, of Title I consistent, you found that in this particular case there were inconsistent signals given to school districts as to exactly how those funds were to be used and to be accounted for.

How is that possible? I don't understand from what was said earlier.

Dr. HILL. The key to the explanation is the difference between regulations and day-to-day interpretation and implementation. The objective that Title I funds be used for supplementary services for educationally disadvantaged children is well established in the regulations. But schools have to find ways of delivering those services to children which are compatible with their school practices and which are identifiably consistent with the regulations. There are lots of different ways that can be done.

The problem the Office of Education faces is that when program monitors go out to the school districts they have to be able to recognize compliance or violation in a lot of different kinds of instances. In the field, the use of funds is very hard to verify short of a complete audit of the entire school district, so there is some need for proxy measures of compliance. These include observations of who is getting served and what they are getting. Using such proxies requires fine judgments.

The division or the difference of opinion that we talked about in the Office of Education is really about how to make those fine judgments. As far as we know, there is no disagreement within the Office of Education that the regulations require that the funds be used in a supplemental fashion. But the disagreement is about the standards that should be applied and the level at which compliance should be observed.

In a nutshell, the importance of the disagreement is that it is sometimes very difficult to verify whether compliance exists or not. Some take the requirement that funds be supplementary as being so fundamental that they will adopt proxies and make fine judgments in order to guarantee that they are supplemental.

Others in the Office of Education have wanted to withhold judgment and felt that rather than interfere with the school districts, that they would not make a close examination of supplementation. It is a difference in the use of administrative discretion.

The result of that difference is that a lot of school districts are uncertain about what they are obliged to do. Some of them take the opportunity to shop around to find sympathetic interpretations.

Mr. **Miller** Thank you. I don't know if you are the one that should answer that or if somebody else at the table should answer this, but apparently there is some feeling among people that I have talked to and others that there is an inconsistency on the question of parent advisory councils and whether or not they have to be made up only of parents or whether other people in fact would be eligible under the statute, but are not eligible under the regulations.

Can somebody here address that question, not just as to the fact that there is maybe an inconsistency, but whether or not you believe it ought to be only parents or people living in the attendance area or a broader category of people?

Dr. **Minter**. The regulation as I understand it calls for at least 51 percent of the members of the parent advisory council to be parents whose children are in that school and whose children are being served by the Title I program.

Mr. **Miller**. So there really is not an inconsistency, parents can serve on the advisory committee?

Dr. **Minter**. That is right. One of the questions would be who chooses. I read it that the parents have the right to choose others who will sit on that advisory committee.

Mr. **Miller**. Who do they end up choosing, other parents?

Dr. **Minter**. Yes, I believe that is true.

Dr. **Rodriguez**. There is another qualification in the regulations that says in order to be selected to membership on the parent advisory council at the school level or the district level, that that individual must reside in the district respectively or the attendance area. Unforeseen, this precluded certain people from participating in the parent advisory councils that may have a significant contribution to make such as teachers.

Mr. **Miller**. Do you think that ought to continue or do you think that we ought to change it or should the attendance area still be the boundary or should it be broadened?

Dr. **Minter**. The Commissioner is looking at that question right now.

Mr. **Miller**. So are we.

Dr. **Minter**. I think that is as much as I can say. However, it has been the practice, I think, that representatives of let's say a parent advisory council, as Dr. Rodriguez indicated, reside in that neighborhood or in that attendance area. In some school districts there are teachers who do reside within the attendance area. That might be a factor that we have to take into account when we are reformulating that theory.

Mr. **Miller**. It would seem logical that if a teacher was willing to extend their workday beyond the classroom period out of interest for the students in that school and the teacher happened to live across town, that they should not necessarily be precluded, especially if it appears that they would have to receive the approval of the parents on the committee. The teacher cannot get on without that approval, right?

Dr. **Minter**. That is right.

Mr. **Miller**. So the parent would have to decide this is a teacher who is in tune with their goals and desires for the uses of that money and programs. So you are really not opening it up to an outsider or somebody whose interests may deviate from what the group thinks?

Dr. **Minter**. That is an issue we are looking at and I think we will have to look at it in great depth, Mr. Miller.

Mr. **Miller**. This is an educational experience for me since I am new here. First of all, the parent advisory councils are open at least 51 percent to parents who live in the attendance area.

Dr. **Minter**. And whose children are served by the Title I funds.

Mr. **Miller**. And then they select the rest of the council?

Dr. **Minter**. I believe that is true.

Mr. **Miller**. What do you do, do you nominate yourself and they either pass on you or they don't?

Dr. **Minter**. My experience as a superintendent in a local school district is that the parent's advisory council is an ongoing group that meets and people are nominated, people who attend the meetings, as in any other group or association. So that the parents themselves know who the people are that they feel would represent theirs and their children's interests in the program and who would take an active part in carrying out the wishes of the parents and carrying out the intent of the Congress even in seeing that the parents are meaningfully involved in the Title I program.

Mr. **Miller**. How do you think that goal is met?

Dr. **Minter**. Well, I think it is met with varying success around the country. There are some local education agencies that have very strong parent advisory councils. When I say strong, I mean that the administrators, the teachers, the members of the pact are by and large in agreement and there are compatible relationships. There are other places which have come to our attention in which the parents do not feel that the school district pays the required amount of attention. Certainly that was the intent of Congress.

So we look into those situations. So I would say that the reading is mixed in terms of the success of the PAC, but I don't think there is any misreading in terms of the meaning and necessity for the pact or that they should continue.

Mr. **Miller**. While it is important, I assume from your remarks, Doctor, that it is important to have what you would call a strong group in terms of direction, do you think there is enough diversity within these groups, not controversy but diversity?

Dr. **Minter**. Yes. I am not sure, of course, throughout the country of what the composition of the pacts are, but from my own experience there have been teachers and administrators on pacts. In the district where I served there was an adminstrator who reported to the superintendent who also served on the PAC. That was by and large an agreeable relationship, not always, but no such relationship is always agreeable.

But I think the parents felt they had a strong say in the direction of the Title I program and the services. That is what I would indicate would be a strong PAC.

Mr. **Miller**. Mr. Pressler?

Mr. **Pressler**. I am putting in a plug for the small States. I come from South Dakota. Do the small States receive enough administrative monies to cover their needs and costs under Title I? I think maybe Mr. Hill or Dr. Minter could maybe address that, or maybe not.

Dr. **Hill**. Mr. Pressler, the small States which have small Title I allocations receive a floor amount of $150,000 each. Part of our study was to look at the difference between those States and other States in terms of the way they operate their Title I programs. We did not find that the States with small set-asides operated much differently from the ones with larger set-asides. In the testimony I gave earlier this morning we discussed the importance for any State of its own decision to spend its Title I set-aside funds on permanent, full time staff instead of consultants and contractors. The States differ from one another, but whether they got the floor amounts or larger amounts did not seem to cause that difference.

In general, it can be said that the small States will get enough money provided they put it into hiring of staff. But there is one important exception. Some States, and I must say I don't know about South Dakota, have a very large number of local education agencies. Those States have a lot of places to visit and a lot of places to be responsible for. Other States have relatively small numbers. As a measure of the workload of a State, the number of local education agencies is perhaps as important as the size of its Title I grant. That is not now taken into account. That could certainly cause trouble for any State, especially a small one.

I might say I don't know about South Dakota, but I will be glad to find out if you would like.

Mr. **Pressler**. If no one else has a comment, I have another question. Under the new reorganization, do the 10 regional people actually report to the Washington Title I staff?

Dr. **Minter**. It is our intention that when the regional people are returned to Washington that they will continue to report to the Title I staff.

Mr. **Pressler**. I guess this might not be in the area of the hearing this morning, but yesterday I was touring some of our handicapped schools in South Dakota. The issue was could Title I funds be kind of moved over in some instances and some Title I programs used as opposed to Title VI or is there a blurring here? Is there an effort to give States more firm direction in terms of the use of Title I funds?

Dr. **MINTER**. There is a set-aside, of course, for the handicapped in the Title I funds. I will ask Dr. Rodriguez to speak to that.

Dr. **RODRIGUEZ**. That is for State-operated institutions for handicapped and that does provide for following the child into the LEA. I don't believe generally, however, that there is an overlapping of the monies and the monies under Title I.

Mr. **PRESSLER**. Do States have quite a bit of discretion in this area or not? I didn't remember how explicit the law is.

Dr. **RODRIGUEZ**. By definition, under Title I all handicapped children who are in institutions are eligible for services. I am not that familiar with the educationally handicapped to speak to that.

Mr. **PRESSLER**. Thank you very much.

Mr. **MILLER**. Mr. Jennings?

Mr. **JENNINGS**. Dr. Fairley, when you testified last week you were asked a question about targeting schools. You said you would give a response when you reappeared this morning. If you recall, one of the NIE reports said that even though schools are supposed to be chosen as target schools because there are not sufficient appropriations to serve all children in all schools within Title I eligible areas, that in fact that is not occurring and many school districts are spreading their money across almost all schools and not targeting. Do you have a response to that statement?

Dr. **FAIRLEY**. I don't at this time.

Mr. **JENNINGS**. Will you submit that for the record?

Dr. **FAIRLEY**. Yes.

[The information referred to follows:]

QUESTION: Will you please provide a table showing the number of districts which have not targeted their Title I funds on specific attendance areas. Also if tha answer could be prepared in such a way that the reasons for districts not targeting on attendance areas is shown, it would be helpful.

TITLE I, ESEA

STATE	No. of Participating School Districts	No. of School Districts Selecting Target Areas	No. of School Districts Not Selecting Target Areas: Single Attendance Areas	No. of School Districts Not Selecting Target Areas: No Wide Variance or 30% Rule	No. of School Districts Not Selecting Target Areas: TOTAL
ALABAMA	126	121	5	0	5
ALASKA	47	16	19	12	31
ARIZONA	288	191	69	28	97
ARKANSAS	385	16	325	44	369
CALIFORNIA	928	495	430	3	433
COLORADO	176	69	105	2	107
CONNECTICUT	141	78	63	0	63
DELAWARE	26	26	0	0	0
FLORIDA	67	66	1	0	1
GEORGIA	187	47	140	0	140
HAWAII	1	1	0	0	0
IDAHO	103	27	73	3	76
ILLINOIS	880	189	589	102	691
INDIANA	305	294	9	2	11
IOWA	288	133	150	5	155
KANSAS	328	202	125	1	126
KENTUCKY	181	61	32	88	120

TI. [illegible], ESEA

STATE	No. of Participating School Districts	No. of School Districts Selecting Target Areas	No. of School Districts Not Selecting Target Areas: Single Attendance Areas	No. of School Districts Not Selecting Target Areas: No Wide Variance or 30% Rule	No. of School Districts Not Selecting Target Areas: TOTAL
LOUISIANA	66	43	0	23	23
MAINE	233	6	227	0	227
MARYLAND	24	23	0	1	1
MASSACHUSETTS	351	280	65	6	71
MICHIGAN	346	120	226	200	426
MINNESOTA	434	57	250	127	377
MISSISSIPPI	152	151	1	0	1
MISSOURI	400	197	200	3	203
MONTANA	230	34	215	1	216
NEBRASKA	280	50	200	30	230
NEVADA	17	16	0	1	1
NEW HAMPSHIRE	165	13	152	0	152
NEW JERSEY	465	155	310		310
NEW MEXICO	86	21	10	55	65
NEW YORK	737	449	288	0	288
NORTH CAROLINA	145	123	10	12	22
NORTH DAKOTA	270	27	241	2	243
OHIO	596	144	393	59	452

TI[illegible], ESEA

STATE	No. of Participating School Districts	No. of School Districts Selecting Target Areas	No. of School Districts Not Selecting Target Areas		
			Single Attendance Areas	No Wide Variance or 30% Rule	TOTAL
OKLAHOMA	399	22	500	77	577
OREGON	390	60	215	15	230
PENNSYLVANIA	505	311	70	124	194
RHODE ISLAND	40	30	7	3	10
SOUTH CAROLINA	92	37	0	55	55
SOUTH DAKOTA	186	10	175	1	176
TENNESSEE	148	92	12	44	56
TEXAS	1009	114	800	95	895
UTAH	40	27	10	3	13
VERMONT	246	7	235	4	239
VIRGINIA	140	138	2	0	2
WASHINGTON	264	151	61	52	113
WEST VIRGINIA	55	52	0	3	3
WISCONSIN	390	72	181	137	318
WYOMING	42	27	13	2	15
DISTRICT OF COLUMBIA	1	1	0	0	0
TOTAL	13721	5092	6894	1423	8629

Mr. **Jennings**. Dr. Rodriguez, you said earlier that if additional staffing does become available for the Office of Education for Title I, you would use the staffing on beefing up the administration of the neglected and delinquent program and the migratory education program and not beefing up the staffing of the LEA part of Title I. How did you arrive at that decision?

Dr. **Rodriguez**. Perhaps you misunderstood. I said in addition to beefing up the staff of the LEA program.

Mr. **Jennings**. How would you divide up the staffing between those three programs?

Dr. **Rodriguez**. We had proposed that if we had 20 additional staff, and correct me if I am mistaken, Dr. Fairley, but I believe it was seven to the migrant and three to N & D and ten to the LEA grant.

Mr. **Jennings**. In connection with all the programs under Title I, I understand that the main means of program enforcement is through the use of site visits by Office of Education staff from Washington going out to visit State capitals and going to a few school districts.

How many site visits were conducted last year of State departments of education and local school districts?

Dr. **Fairley**. I think last year we got to all but five State departments of education. When the staff goes into a State, they normally get to three to four local school systems. So I would say 45 States and about 150 local school systems last year.

Mr. **Jennings**. So your travel funds are sufficient for you to be able to visit almost all the States every year?

Dr. **Fairley**. No, sir, they are not.

Mr. **Jennings**. In what way are they insufficient?

Dr. **Fairley**. Well, we would like to, as I said, visit each State at least once a year for a week's duration of time and selected local school systems. We did not have the money to do that last year.

Mr. **Jennings**. What about fiscal 1978?

Dr. **Fairley**. The funds have not been allocated as yet, but we hope to meet that objective.

Mr. **Jennings**. Are you satisfied that the use of site visits to States is an adequate means of assuring that the law is carried out?

Dr. **Fairley**. I think it is adequate. I think if we had more travel resources to send more people and more people to go, that this would be a more effective way of assuring compliance.

Mr. **Jennings**. Dr. Minter, the NIE report on administration of the Title I program seemed to say that the Office of Education is using different standards in judging the administration of the program by States and local school districts than HEW is using in auditing these programs. What efforts are made between the auditing agency and the Office of Education to assure that the same standards are being used?

Dr. **Minter**. We have entered into an ad hoc series of meetings with the audit agency, Mr. Jennings, and we had our first such meeting at the end of the past week. We plan to sit down together and to discuss the points at which there may be differences, certainly the points that we use for guidelines.

I think the indication is that we will not have any trouble as we begin to develop the manual and the guidelines that the NIE report called for and that the Commissioner has directed that the division and the office and the bureau repair. I would say we are well on our way to removing those inconsistencies.

Mr. JENNINGS. I would like to ask Mr. Kropatkin several questions. The first would have to do with these different standards.

From your experience have you found that the Audit Agency and the Office of Education apply different standards?

Mr. KROPATKIN. I don't think we apply different standards, but I think we interpret things differently at times.

Mr. JENNINGS. That seems like a semantic difference.

Mr. KROPATKIN. Possibly, but we are reading from the same standards. Dr. Minter is correct in saying that we had a meeting last week, but from OE's past record I don't share his optimism. Hopefully it will improve and we are prepared to move as fast as possible in auditing against the new manual and guidelines.

Mr. JENNINGS. What degree of knowledge of Title I is required of auditors before HEW sends them out into the field?

Mr. KROPATKIN. They are made familiar with all the regulations, guidelines, previous audit reports, evaluation reports that are prepared in the past, and any interpretive guidelines that supplement all these. We conduct training sessions on our own in Title I and related areas. We also send to the auditors any material appropriate and we contribute our general supervisory know-how in the field of training in advising auditors who go out to do the actual audits.

Mr. JENNINGS. This may be unusual, but when I was down in Texas talking to the people in the State department of education, they told me when some HEW auditors came in to audit the Title I program that they had just come off auditing Medicare Programs and they did not in fact have a copy of the Title I regulations or the law and were not familiar with the different program guides and other materials used in Title I. To your knowledge is that a common experience?

Mr. KROPATKIN. I don't think that is a common experience. Our auditors do, however, move from one program area to another as they go through the year's operations. The normal technique is for the auditors to perform the survey of overall State agency administration and look at the appropriate data that the State agency provides. They immediately begin preparing themselves for the details they have to understand in connection with the specific audit assignment and prepare a program of audit steps implementing our general Title I audit guide. Auditors have to audit many programs and need not memorize all the details that pertain to each program in advance; but they do adequately prepare themselves as they go along a normal process in keeping with professional auditing standards.

Mr. JENNINGS. Do you believe you should use auditors like that rather than having them build up expertise in an area?

Mr. KROPATKIN. You have to remember in most cases auditors have a previous familiarity with the program, either having audited in another State in their region or they have in prior years audited this program itself in that particular State. Besides, they have regular techniques they employ which would be applicable to any program that would serve them in good stead in understanding whether the program people or the State and local people have complied with a particular regulation or guidance.

Mr. JENNINGS. Is there any information you could supply for the record showing the prior experience of auditors as they go in to audit the Title I program? Is there any information you could give us to see how many of the auditors have in fact been familiar with the Title I program for a while or whether they are relatively new to it?

[See attached information:]

BACKGROUND AND EXPERIENCE OF AUDITORS IN RELATION TO TITLE I AUDITS

1. Education - Our auditors have at least a Bachelor's Degree with concentration in accounting, auditing, and related subjects. Over 100 of our professional staff have advanced degrees or are working towards them and we have over 200 CPAs.

2. Training - A career development program for the HEW Audit Agency Staff combines on-the-job training and formal training. The formal training program includes approximately 80 days of progressively advanced technical training during the individual's first five years. These in-house courses are presented using the case study method of teaching. The case studies are based on actual audit situations including ESEA Title I. Specialized training to increase audit, analytical writing and supervisory skills are offered members of the professional staff during their entire career.

In addition, auditors (primarily supervisory) periodically attend Title I seminars sponsored by the Office of Education and cooperative workshops conducted by the Office of Education and the Audit Agency.

3. **Experience** - A profile of a typical staff assigned to a Title I audit follows:

Grade Level and Title	Average Number of Previous Title I Assignments
GS 14 - Assistant Regional Audit Director	5
GS 13-14 - Branch Manager and Other Intermediate Level	2
GS 11-13 Auditor-in-Charge (On-site Supervisor)	2
GS 7-13 Total On-site Auditors	3

The profile shows increasing levels of experience at the higher levels of supervision. In addition, Title I reports are reviewed by our Regional Audit Directors who have an average of eight years experience in Title I audits. Title I audit reports must also be approved at the headquarters level before they can be issued by the Regional Audit Directors. The present headquarters staff has 10 years experience with Title I audits.

Mr. **Kropatkin**. I could provide that for you and show you how they progress from audit to audit and how they become familiar with the particular area. Our supervisors, especially, are quite knowledgeable in this area both at the Washington and regional levels and do provide overall guidance and supervision.

Mr. **Jennings**. Could you tell the committee how many audits were conducted on Title I 10 years ago as compared to today?

Mr. **Kropatkin**. Ten years ago?

Mr. **Jennings**. Or some time in the past. The reason I ask that question is that the NIE report on administration seems to say that the audit agency was "giving up" on the Office of Education and auditing of the Title I program because of the feeling the Office of Education was "giving away" the audit findings and not in fact enforcing them to recover what the audit agency felt had been violations of the law.

Have the auditors "given up" on the Title I program?

Mr. **Kropatkin**. Not at all! As a matter of fact in next year's work plan, for fiscal year 1978, we have programmed 18 audits in Title I. This is more than we did last year. Last year we had a heavy call on our resources for various other priorities. I think it was a decision on our part to devote more resources to other programs proportionately last year rather than any overt policy to stay away from Title I, or not to do Office of Education programs. There was no pressure or request of any sort to do that. It was our internal decision to do a little less last year than we did the year before.

Mr. **Jennings**. Is the audit agency satisfied that its findings are probably used once the information is turned over to the program administrator?

Mr. **Kropatkin**. I am not sure I understand what you mean by "satisfied."

Mr. **Jennings**. Do you believe the system is working adequately now so there is need for no improvement?

Mr. **Kropatkin**. I think the Office of Education could act more speedily in the audit resolution process and the Inspector General has reported recently in his quarterly report to Congress that this is a problem that still persists.

Mr. **Jennings**. That is the only recommendation you have to make even though, as I understand it, less than 10 percent of the funds which the HEW audits have found to be allegedly misspent in Title I programs are moved on by the Office of Education as being misspent?

Mr. **Kropatkin**. I think recovery of funds is not the only criterion by which you measure accomplishments or results that emanate from the audit effort. That is only one of them. We recommend financial adjustments when it is clear that noncompliance has taken place.

We also recommend procedural strengthening and better processes in general that would negate the need for making any future financial adjustments and recommendations. We have done this in many cases.

The fact that only a certain proportion of the audit adjustments have been sustained is probably a natural one involving many legal considerations.

Mr. **Jennings.** Could I ask you whether the auditors have found certain common characteristics among States or local school districts which have been administering what you consider to be good programs?

Mr. **Kropatkin.** Yes. If I had to think back over the years, I think there is a definite correlation between those States where there is an active State agency that gets involved in training and guiding and monitoring efforts at the local school districts with how well the local school districts appear to comply with the Title I regulations.

Mr. **Jennings.** Dr. Minter, if I could follow up on that with you, again the NIE report seems to find the most active States are those which use most of their Title I administrative allocation for hiring of staff and not for other things.

Is there anything in that finding of the NIE study and what Mr. Kropatkin has said about active State agencies which you can use to improve the Title I program?

Dr. **Minter.** We would certainly agree with that and would encourage in giving technical assistance to States that personnel be used in the direct instruction of the pupils.

Mr. **Jennings.** I think that misses the point. I think what he was saying is that the States that tend to be most active in State administration are the ones who have the best programs and the NIE report found the States which hire the most staff at the State level out of their State allocations for administration tend to be the States which have a better program.

Dr. **Minter.** I am sorry, I did miss your point.

Mr. **Jennings.** Is there anything in both of those statements which the Office of Education can draw upon to help the States improve their programs?

Dr. **Minter.** I believe so, if we follow those thoughts and that finding as we monitor State programs and as we give assistance to the State education agency, yes, sir.

Mr. **Jennings.** If I could ask you about comparability. Is it correct that today when a school district is found to be out of comparability in one or two schools, the entire school district's allocation has to be paid back because of this lack of comparability?

Dr. **Minter.** Yes, that is true, but we have sent to the Secretary for his act and consideration a new recovery policy and we are hoping that when he acts, if he does act in the affirmative as we recommended, that there will be a different policy for recovery of audits.

Mr. **Jennings.** Do you believe that it would make more sense to have a graduated penalty for a portion of the funds which are found to be in schools which are not comparable or to have some other kind of limited penalty? Do you think that device would make more sense?

Dr. **Minter.** It would be another type which we recommended.

Mr. **Jennings.** The comparability requirement seems to be one of the requirements in the Title I statute which is causing the most paperwork at the State and local levels and the committee consistently receives complaints about the paperwork burden.

Are there any ways in which the Office of Education can simplify that requirement in order to reduce this paperwork?

Dr. **Minter**. I will ask Dr. Fairley to speak to that point.

Dr. **Fairley**. Since the comparability requirement, we have done everything possible to reduce the amount of paperwork required. I think now there are only about 2,000 school districts in the country that have to submit reports, so we are aware that that has been a problem. We have tried to reduce that problem.

Mr. **Jennings**. Is it correct that a school district has to be in compliance with comparability ever day of the school year and that if the auditors or if the Office of Education comes in on any particular day, in looking at the books, they have to find instant comparability, otherwise that school district is out of compliance?

Dr. **Fairley**. We ask them to maintain comparability throughout the year.

Mr. **Jennings**. We have received some complaints about that. With the ways in which accounting is done in school districts, that it is not always possible to do that during the year because of shifts in personnel, transfer assignments, purchase of textbooks and things like that.

Is there any other way to assure comparability without requiring day-to-day comparability?

Dr. **Fairley**. We realize that is a problem. We suggest should a school system discover they are falling out of comparability they try to get back in as quickly as possible. It is difficult to do it on a day-by-day basis, I agree, but we do feel comparability should be maintained.

Mr. **Miller**. Has minority counsel some questions?

Mr. **Cross**. Following up on comparability, how many times have you cut off a district's money because of being out of comparability?

Dr. **Fairley**. We have not made a cutoff. The State would not make payment to that school district.

Mr. **Cross**. How many times has that happened?

Dr. **Fairley**. Last year we had no school system to lose its funds because of comparability.

Mr. **Cross**. And the previous year?

Dr. **Fairley**. I don't know.

Mr. **Cross**. Could you submit that for the record?

Dr. **Fairley**. I surely will.

[The information referred to follows:]

QUESTION: Will you please provide information for prior fiscal years on the local educational agencies which have had difficulty with the "comparability requirements" of Title I? Specifically, we would like to know the number of district which have had their applications disapproved because of inability to meet comparability requirements.

COMPARABILITY REPORT OF SUMMARY DATA

	NATIONAL TOTALS	
	FISCAL YEAR 1975	FISCAL YEAR 1976
TITLE I LEA'S	13,331	13,610
TITLE I LEA'S REQUIRED TO SUBMIT DETAILED DATA	3,435	2,653
TITLE I LEA'S SUBMITTING DATA TO SEA	2,839	2,639
TITLE I LEA'S REQUIRED TO SUBMIT REVISED REPORT	186	165
LEA'S SUBMITTING REVISED REPORTS BY DECEMBER 1	146	158
LEA'S SUBMITTING REVISED REPORTS AFTER DECEMBER 1	32	14
TITLE I APPLICATIONS FINALLY DISAPPROVED	6	0

Mr. Cross. Dr. Minter, I will ask you about a story that appeared in the Post this morning. It says Secretary Califano yesterday announced "The creation within HEW's Office of Education of a new project on fundamental skills. It will consolidate 13 existing programs which together spend $3-1/2 billion annually. One of the goals of the project will be to improve targeting of HEW money for basic skills."

Can you tell us something more about that?

Dr. Minter. I knew I should have read the Post this morning. I am afraid not, Mr. Cross.

Mr. Cross. OE does not know?

Dr. Minter. I said I could not tell you more about that at this time.

Mr. Cross. But you are the deputy commissioner in charge of the bureau in which these programs obviously are located.

Dr. Minter. Not necessarily, from what you read in the Post. There are other programs reporting directly to the Commissioner, for day-to-day operation, which are governed by the executive deputy commissioner. I meant there has been some discussion of ways of combining programs and of breaking through to combine those programs which do make sense to reinforce programs. I am not certain of the language of that, whether that means a very formal kind of operation is about to take place.

Mr. Cross. Both sides of the aisle would be interested in knowing what this means and what the term "consolidate" means.

Dr. Minter. This is a news reporter's term and can claim no knowledge for that.

Mr. Cross. If you can submit that, not only for the record but as soon as you have something independent of the hearing record, I think we would be interested in having that separately.

Dr. Minter. Sure.

[The information referred to follows:]

QUESTION: (by Mr. Cross)

I note in a recent press article that Secretary Califano inferred that a number of education programs might be consolidated into a new thrust on basic skills? Can you advise as to the programs the Secretary was talking about and the nature of the described consolidation.

ANSWER:

In a speech in San Francisco delivered by Secretary Califano on October 24, before the College Entrance Examination Board he made the following statement:

> --Fourth, as part of a new emphasis on basic skills, we are establishing in HEW's Office of Education a project on fundamental skills. This will be the first time that 13 different Federal programs dealing with basic skills--programs which together spend three and one-half billion dollars annually--have been linked together. This innovation will sharpen goals, strengthen programs, and ensure better targeting of funds by HEW as we work to help States and localities develop effective plans for improving basic skills.

Perhaps the press interpreted the Secretary's statement to mean a legislative consolidation. At the time the Secretary made the statement there was a Task Group at work in the U.S. Office of Education analyzing a number of the elementary-secondary educational programs to determinine if the legislative objectives of the programs were sufficiently broad to encompass the goal of improving the competencies of students in basic skills. The Task Group did not approach its work with the goal of legislative consolidation in mind.

Since that date additional consideration has been given to the possibility of requesting the Congress to make legislative changes in some programs as the Elementary and Secondary Education Act is considered in the second session of the 95th Congress. Some of the requested changes may have to do with adjusting the objectives of some programs to make them more responsive to improving the basic skills of students. The specifics of these proposals will be forwarded to the Congress as the Administration's proposal just as soon as the decisions are made and agreement within the Executive Branch is reached on desired changes and related matters.

Mr. **Cross**. One of the specific issues that came to me, Dr. Fairley, was there was a matter involving an audit in Long Beach, California sometime ago, and Long Beach said they were guilty and wanted to pay back the money and OE didn't know how to take the money back.

Has that audit exception at Long Beach ever been resolved, what is the final step in the audit resolution process and did in fact the Long Beach check sit around until somebody knew what to do with it?

Mrs. **Dane**. A school district can always write a check to the Office of Education and we will deposit it in the Treasury. That is the simplest way of returning funds.

Mr. **Cross**. Did that check sit before it was deposited because no one knew what to do with it?

Mrs. **Dane**. I am not familiar with that particular check. If the check came to us, we would know what to do with it. If it came to the finance office and there was no identity along with that check, they may have had a problem.

Mr. **Cross**. Could I ask, for the hearing record, an explanation of what did happen in that case?

Mrs. **Dane**. Yes, sir.

Mr. **Cross**. And I would also like to know if the Long Beach audit exception has been closed and how long it took to close it. And another question which will be submitted in writing is, what is the final step in the audit resolution process?

[The information referred to follows:]

California (Long Beach) Title I Audit Report, ACN: 40034-09
July 1, 1968 through August 31, 1972

History

June 7, 1974	Final Audit Report issued by HEW/Audit Agency. Amount sustained - $517,252
October 24, 1974	Check of $76,970.75 received from State of which $56,826.90 was applied to audit account receivable.
January 22, 1976	Final Determination Letter sent to State educational agency (SEA). Refund of $318,396 requested, balance barred by Statute of Limitations.
March 23, 1976	SEA notified OE of it's intention to have Long Beach draw a warrant in the favor of SEA and payment to OE would be made through the letter-of-credit procedures. (SEA decided not to appeal.)
June 15, 1976	General cash check of $352,787.27 received from SEA of which $240,192.73 was applied to audit account receivable.
June 21, 1976	SEA furnished copies of documents reflecting transfer of funds for the purpose of closing audit. State determined amount of refund should be reduced by $21,376.37 because of the use of a different depreciation allowance and an additional amount not due because of Statute of Limitations.
February 17, 1977	OE/Finance negotiating with SEA for additional information regarding exceptions by SEA concerning the $21,376.37 difference relating to depreciation allowance and amount barred from refund by Statute of Limitations.
November 1977	OE/Finance requesting legal opinion on the issues from Office of General Counsel.

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION

11 OCT 1977

) : See Below

ROM : Acting Executive Deputy Commissioner
for Support Services

SUBJECT : OE Procedures for Controlling and Accounting for Audit Disallowances

Enclosed for immediate implementation are OE's interim procedures for controlling and accounting for amounts due OE as a result of monetary audit exceptions.

These procedures implement recent Departmental policy and procedures for controlling and accounting for audit disallowances. The interim procedures have been developed jointly by the Audit Liaison and Coordination Staff and OE Finance and will be refined for inclusion in the OE management manual in the near future. Until such inclusion as an OE Directive, these interim procedures supersede OE Directive 7-06, "Controlling Amounts Due OE As A Result Of OE Monetary Audit Exceptions" dated June 11, 1974.

To assist in the immediate implementation of the interim procedures, we have included the following tabulated materials:

Tab A Departmental policies with respect to controlling and accounting for audit disallowances dated March 29, 1977 including amendments dated August 23, 1977.

Tab B Sample letters of final determination

B.1 Title I sample (award not made under DFAFS)

B.2 Student Financial Assistance sample (award made under but purged from DFAFS)

B.3 Student Financial Assistance sample (award made under and not purged from DFAFS)

Tab C Grantee instructions and certification for disallowances not purged from DFAFS.

Tab D Appendix 16, HEW/AA Procedures Handbook, "Preparation of Audit Clearance Document (ACD)"

Tab E OE Addendum to ACD, "Monetary Recoveries//Accounting Information" - sample format.

Tab F Sample Letters of Status of Collectibility (ALCS to Finance Division)

Effective control of disallowances is a high Departmental priority. Every effort to implement the attached procedures should be made immediately. Questions should be directed to Al Dubbe, Chief, ALCS, at 245-2757.

William F. Pierce

Addressees

John W. Evans, DC/OP
Gerald E. Gipp, DC/OIE
Leo L. Kornfeld, DC/BSFA
Thomas K. Minter, DC/BESE
Richard McCann, Acting RC/Region I
Preston Royster, RC/Region III
William L. Lewis, Acting RC/Region V
W. Phillip Hefley, RC/Region VII
Duan Bjerke, Acting RC/Region IX
Harris Keller, IOC
Maenylie Reed, OM
James C. Falcon, BSFA
James B. Roberts, BESE
Edward Jennings, BOAE
James Borches, OM
Robert Kuzner, BEH
Carl Mulert, BSFA
William Craven, BHCE
Kenneth Franks, Region I
Sewell Griffith, Region III
Edgar Faber, Region V
Henry Pratt, Region VII
John Thorslev, Region IX
David Kosinki, HEW/F
Malcolm Mason, GAB/OS
Cora Beebe, DPB
Albert Riskin, GPMD
James Arneson, OM

Edward T. York, Jr., DC/OM
Edwin W. Martin, DC/BEH
Alfred L. Moye, DC/BHCE (Designate)
Charles H. Buzzell, DC/BOAE
John Sokol, Acting RC/Region II
Thomas Moorefield, Acting RC/Region IV
Edward J. Baca, RC/Region VI
Leon P. Minear, RC/Region VIII
Allen Apodaca, Acting RC/Region X
Priscilla Dever, OP
William Floyd, OIE
Rick Wilson, BHCE
Gene Hill, BEH
Alfred J. Dubbe, ALCS
Sal Corrallo, OP
Marie Johnson, BESE
William Hassler, BSFA
Nancy Arnold, BOAE
Chester J. Glod, Region II
Richard Dean, Region IV
Ralph Evans, Region VI
Ann Campbell, Region VIII
Don Heslop, Region X
David Dukes, HEW/F
David Pollen, AHB
William Ward, FD
John Taber, GPMD

I. RESPONSIBILITIES:

OE Action Officials, the OE Audit Liaison & Coordination Staff (ALCS) and the OE Finance Division each have significant roles in the recovery of amounts due OE through audit disallowance.

A. Action Officials

Action officials are OE officials delegated cognizant responsibility by the HEW Audit Agency or the Audit Liaison & Coordination Staff for the resolution of final audit exceptions. With respect to the monetary exceptions, the action official is responsible for the determination of amounts to be recovered by OE and for notification of the auditee and the Audit Liaison & Coordination Staff.

B. Audit Liaison and Coordination Staff (ALCS)

ALCS is responsible for monitoring the resolution of all audit exceptions, for distributing to the Finance Division all information required for the recovery of amounts determined to be owed the Office of Education, and for developing and distributing audit related management information.

C. Finance Division - Accounts Receivable Section

The accounts receivable section is responsible for the actual recovery, negotiating of manner of repayment, accounting, and reporting of all amounts determined by action officials to be owed OE.

II. PROCEDURES: ACTION OFFICIALS

A. Conducts negotiations with the auditee, auditors, etc. concerning audit findings.

B. Arrives at a final determination of the specific amounts to be due the Federal Government.

C. Determines general form of repayment. Recovery of funds must be handled through DFAFS if the award concerned is/was paid by DFAFS and has not been purged by DFAFS. For all award purged from DFAFS and for all awards not made through DFAFS, recovery of amounts owed must be in the form of direct remittance to the OE Finance Division. (See OE Administrative Announcement No. 436, Handling Refunds on Awards Paid by DFAFS.) Where there is a question as to whether or not a grant or other authorization has been purged from the DFAFS records, the action official will contact the OE Finance Division directly.

D. Informs the auditee by letter of the OE final determination of amounts owed the Federal Government. This letter must include the following information relative to monetary recovery: (See Tab B for sample letters.)

1. Notification that the matter of recovery has been referred to the OE Finance Division.

2. For awards not purged from DFAFS, notification that adjustments in the DFAFS Expenditure Report 27 are required and attached instructions on how to accomplish such adjustments. The auditee is also required to certify to having taken appropriate action and to submit this certification to OE Finance Division. The certification form will accompany the instructions. (See Tab C for certification format.)

3. For awards not made under or paid under but purged from DFAFS, notification that payment should be remitted in the form of a check to the OE Finance Division. The auditee must also be instructed to include with any remittance, when applicable, the audit report control number, OE contract/grant number, appropriation symbol, common accounting number, and object class identifier.

4. Instructions to address any questions with respect to manner of repayment of amounts due OE to the OE Finance Division.

E. Prepares the Audit Clearance Document (ACD) in accordance with Appendix 16, HEW/AA Procedures Handbook. (See Tab D.)

F. Prepares the OE Addendum to the ACD, "Monetary Recoveries, Accounting Information". (See Tab E for sample format.) The following information must be included whenever applicable in the OE Addendum:

1) Amounts to be recovered
2) CFDA Number
3) OE Contract/Grant number
4) Appropriation Symbol
5) Common Accounting Number
6) Object Class
7) Auditee Entity Number

If there are circumstances which warrant special attention by the Finance Division, then such information as may be necessary should be included in the "Comments" section of the OE Addendum. This may include such information as the financial condition of the auditee, ability to repay, auditee desire to offset against other current grants etc., as may be known by the action official. Under no circumstances should any offer or commitment with respect to manner of repayment be made by the action official.

G. Sends five (5) copies of the ACD, two (2) copies of the OE Addendum and two (2) copies of the final letter of determination to ALCS.

III. PROCEDURES: AUDIT LIAISON AND COORDINATION STAFF

A. Reviews ACD, final letter of determination and OE Addendum to the ACD.

B. Forwards one copy each of the ACD, final letter of determination, OE Addendum to the ACD, audit report and status of collectibility memorandum to the OE Finance Division.

C. Requests appeal status report from appropriate appeals hearing board or liaison.

D. On the basis of appeal status report, notifies OE Finance Division of the status of audit disallowances in the appeals process and changes in accounts receivables due to negotiations, decisions, and other factors. (See Tab F for sample notification format.)

E. Receives information from Finance Division and prepares regular reports of collection activities for HEW and OE Officials.

IV. PROCEDURES: FINANCE DIVISION

A. Upon receipt of copies of the audit report, final letter of determination, ACD, OE Addendum to the ACD, and status collectibility memorandum, establishes appropriate files and accounts receivable and implements collection procedures in accordance with Departmental guidelines. (See Tab A for Departmental procedures and amendments.)

B. Upon receipt from ALCS of notification of appeals initiation or disposition, makes appropriate adjustments in accounts receivables and collections activities.

C. Provides ALCS with continually updated information on status of receivables from audit exceptions.

V. SPECIAL PROCEDURES RELATING TO APPEALS

A. Amounts determined by the action official to be owed the Office of Education are subject to various appeals procedures. Audit determinations with respect to programs funded under Title I, ESEA are subject to appeal to the OE Title I Audit Hearing Board within 30 days of issuance of the Final Letter of Determination. Determinations with respect to the discretionary grants programs listed in Appendix A of CFR 45.16 are subject to appeal to the Departmental Appeals Board within 30 days of issuance of the Final Letter of Determination. Other audit determinations have on occasion been appealed to either the appropriate Deputy or the Commissioner of Education.

B. Both the Title I Audit Hearing Board and the Division of Grant and Procurement Management (which provides liaison to the Departmental Grant Appeals Board) are responsible for notifying ALCS of acceptance of appeals and appeal dispositions. Similarly, any other Bureau official receiving an informal appeals request is responsible for notifying ALCS so that collections activities can be appropriately modified.

C. To insure that collection efforts are not made until the grantee has exhausted his appeal rights, ALCS is required to notify the OE Finance Division in writing as to whether the grantee has appealed the action official's final determination. (See section IV (D) above.) In order to comply with the above requirement, ALCS will request information from the Title I Audit Hearing Board and the Departmental Grant Appeals Board, either directly or through a designated liaison. (See section III (C) above.)

TAB A - Departmental policies with respect to controlling and accounting for audit disallowances dated March 29, 1977 including amendments dated August 23, 1977.

The following Departmental policies shall be implemented by all Principal Operating Components, Agencies, and Regional Offices in controlling, collecting, and accounting for monetary audit disallowances. The responsibility for processing and accounting for audit disallowances remains with the organizational entity that made the original obligation. Request for exception to these policies shall be submitted in writing to the Deputy Assistant Secretary, Finance.

1. All HEWAA audit reports and Audit Clearance Documents (ACD) shall identify the following data when available: (a) the appropriation number, (b) the common accounting number, and (c) the grant or contract number to which the recommended monetary disallowance applies. If this data is not available, HEWAA must so state in the audit report and recommend that recoveries shall be deposited to Miscellaneous Receipts of the Treasury.

2. The Audit Liaison Office shall be responsible for document control, assuring that all Audit Clearance Documents contain the proper accounting identification data, and that copies are promptly sent to the appropriate Finance Office on the same day that they are sent to HEWAA. The Audit Liaison Office shall also be responsible for assuring that all appeal notices and appeal decisions are promptly submitted to the appropriate Finance Office.

3. All monetary audit disallowances resulting from HEWAA audits shall be recorded in the appropriate accounting system as an accounts receivable at the point when an authorized HEW official decides that the audit recommendation is sustained, either in full or in part, as shown on a properly annotated Audit Clearance Document (ACD).

4. All attempts to recover funds from program participants shall be suspended once a recipient has exercised its right of appeal (45 CFR, Section 16.7). Efforts shall be immediately resumed to recover all funds due once the appeal process, both within and outside of HEW, is completed. It shall be the responsibility of the Chairman of the Appeals Board, or other such official responsible for rendering a decision on the appeal, to notify the appropriate POC/Agency Head. It is the responsibility of the POC/Agency Head to immediately notify the appropriate Audit Liaison Office of the Chairman's decision, and, where applicable, the POC/Agency Head's decision to review the Appeals Board decision. The Audit Liaison Office must, in turn, notify the appropriate Finance Office when an appeal is completed and a decision is rendered.

5. Program participants shall be instructed to repay the full amount disallowed by check made payable to the appropriate HEW POC/Agency/Region. Offsetting against current awards is permissable by statute (GAO Manual, Title 4, Sections 54 and 55) but not preferred. One exception is the Public Assistance Program where the program participant identifies the credit on its quarterly expenditure report.

6. Audit disallowances not recovered ninety days after notification by an authorized HEW official that the disallowance was sustained, or sustained after a final appeal decision, shall be offset in full against current monies due the program participant from other grants or contracts unless special arrangements for recovery have been made with the POC/Agency/Region. In the event that the POC/Agency/Region does not have current awards outstanding with the delinquent organization, the POC/Agency/Region shall make arrangements through the Office of the Deputy Assistant Secretary, Finance to offset the amount due against any current monies due from other HEW POCs/Agencies/Regions.

7. All recoveries shall be promptly deposited and credited to the appropriate common accounting number, grant or contract number, and appropriation symbol or to the miscellaneous receipts account of the Treasury if the appropriate information is not available, such as in cases where a disallowance is the result of a systems audit, and, consequently, has not been provided by HEWAA.

8. In accordance with the Code of Federal Regulation, Title 4, Section 102, money owed the Federal Government can be collected in installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. In conjunction with installment payments, interest can be charged and collected.

Mr. **Cross**. Dr. Minter spoke about the technical assistance efforts of the State departments. We had last week or the week before Dr. Evans talking about the Title I technical assistant efforts which are underway.

How is a distinction made on who does what technical assistance and how are those activities coordinated?

Dr. **Rodriguez**. I believe those centers which Dr. Evans spoke to for the last oversight hearing went to the centers which have been established for providing technical assistance on evaluation models. I believe it would be correct to say that that is the only prescribed set of technical assistance activities that are not within the Division of Education for the disadvantaged.

Dr. **Fairley**. Our staff worked very closely with the other staff on this.

Mr. **Cross**. Thank you, Mr. Chairman.

Mr. **Miller**. Thank you very much for your time this morning. The committee will adjourn until 9:30 tomorrow morning.

[Whereupon, at 11:36 a.m., the subcommittee was adjourned, to reconvene at 9:30 a.m., Wednesday, October 26, 1977.]

PART 18: ADMINISTRATION OF TITLE I OF ESEA

WEDNESDAY, OCTOBER 26, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELEMENTARY, SECONDARY AND
VOCATIONAL EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in Room 2175, Rayburn House Office Building, the Hon. William D. Ford, presiding.

Members present: Representatives Ford, Mottl, Kildee and Quie.

Staff present: John F. Jennings, majority counsel; Christopher Cross, minority senior education consultant; and Nancy L. Kober, staff assistant.

Mr. FORD. We will call the hearing on Elementary, Secondary and Vocational Education Subcommittee to order.

We will begin with a panel consisting of Dr. Owen F. Peagler, Chairman, National Advisory Counsel on the Education of Disadvantaged Children; Dr. John L. Crew, Superintendent of Public Instruction for the Baltimore City Public Schools; the Honorable Jack Faxon, State Senator, and Chairman of the Education Committee of the Michigan Senate; and Dr. Arthur Jefferson, General Superintendent of the Detroit Public School System.

Without objection, the prepared testimony submitted by the members of the panel will be inserted in full at this point in the record.

We will proceed first with Dr. Peagler, and ask that you amplify or highlight your prepared statement, or summarize it, however you wish to proceed.

We will proceed through each of the members of the panel before we ask questions.

[The statement referred to follows:]

STATEMENT OF CHAIRMAN OWEN F. PEAGLER BEFORE THE SUBCOMMITTEE ON ELEMENTARY, SECONDARY AND VOCATIONAL EDUCATION

OCTOBER 26, 1977

Title I is an effective strategy to reduce educational disadvantagement. It has increased the rate of learning among students for whom traditional approaches were ineffective. Title I eligible students who are not served typically attain seven (7) months for each year of instruction, slipping further and further behind their peers. Title I participants achieve at least a year for each year of instruction, and sometimes achieve one and one-half (1-1/2) to two (2) years in a school year as a result of intensive instruction provided by Title I funds.

These gains are further dramatized by the fact that nationally, our students' performance has worsened on standardized tests and they have not performed well on the National Assessment for Educational Progress. For Title I students we are seeing a trend which reverses the national pattern, and it is for this reason that the NACEDC recommends reauthorization of this successful program.

Even though Title I has become part of the bureaucracy in local school districts, State Educational Agencies, and among constituents and teacher organizations, the Council's view that Title I be retained has not been stimulated by this institutionalization of the program. Title I is viewed as part of the answer to the public outcry against the current educational system, the high rate of youth unemployment, and the rate of dropouts from secondary schools. The successes of Title I could be available to the rest of the presently eligible population only if additional appropriations are made. With the additional funds and ongoing successes, the Congress and the nation would see a significant change in the performance of our students, especially in the basic skills.

Title I's success has been accomplished by reducing class size and giving additional attention and instructional time to educationally disadvantaged students. This federal educational program has added structure, improved fiscal and plant management, and coordination with other community-funded resources which serves youngsters. Title I has defined parental involvement and assisted in the training of parents to work as genuine partners with staff in behalf of their children. Only five percent of the total allocations for the program have been used for auxiliary services, and then after all other resources have been exhausted, when Title I guidelines, regulations, statutes and spirit are prevailing in a local educational agency the successful pattern of delivery exists. Better technical assistance and increased compliance activities can maximize the positive aspects of Title I. But only more money channeled into this program will bring its benefits to the remainder of eligible children.

The National Institute of Education's Study of Compensatory Education states that 34 percent of eligible children and 99 percent of secondary school eligible youngsters are not served. The NACEDC 1977 Annual Report to the Congress also underscores the need for secondary school compensatory education. In addition to raising the issues of sustaining effects of compensatory education the NACEDC found that adolescent youngsters are not receiving programs tailored to meet their special needs because funds are not available to do so. The Council's 1976 Annual Report discussed the importance of providing educational services to preschool children during the early years which would prevent much of the disadvantagement in the later years. Title I could play this preventative role for children aged three thru five, but local educational agencies are not funded to effectively provide these crucial services. Since the formula count of children begins with children five years old, there is little incentive for LEAs to provide Title I programs to preschool children. The NACEDC recommends that Title I be made available to the other 34 percent of eligible elementary and secondary school students and to nonpublic school students and preschool children living in target attendance areas.

The most significant improvement that can be made is to increase the level of funding. In 1965 dollars, there has been no real increase in the level of funding for services, although appropriations seemed to have dramatically increased. In considering reauthorization we are looking at a program which has a significant impact on a national concern and is proven to be effective. Therefore, Title I should be implemented on more than an experimental basis.

The pattern of delivering Title I with requirements for comparability and maintenance of effort, allowing the flexible program strategies which successfully raise basic skills attainment, focuses additional local resources and state supplements on improving the basic program. The ability to seed change and focus attention on improved learning strategies is unparalleled among other federal educational programs. The Council has seen evidence that school districts convert programs which are successful for Title I children to districtwide implementation with local funds, allowing for maximal use of Title I as an extra again.

If we are to continue to reap the successes of Title I and maintain services we now deliver to eligible children, the key for Title I in 1977 is full funding, improved technical assistance and tighter compliance procedures.

The other area which should be considered is the renewal of Part C of Title I. Suggestions have been made to revitalize Part C of Impact Aid and place it in ESEA, Title I so that education of disadvantaged children living in federal subsidized housing would be coordinated with the Act have been made. Other suggestions have been discussed which would place in Part C a program which gives additional funds to districts with 5,000 or more poor children, in order to favor urban districts. Still others have suggested using Part C for a program serving rural needs, especially in the auxiliary services (i.e., health, counseling, etc.) so critical in rural areas. The Rural Education Report of the Council released last month points out the problems encountered by rural families in attempting to obtain special health services. Many cases of educational disadvantagement among the children of these regions can be directly traced to hearing, speech or other physical disabilities which have impaired the child's ability to learn. The Council believes that educational disadvantagement can be significantly reduced for such children through preventative and maintenance health services.

The Council visited many preschool and early grade Title I programs throughout the south eastern parts of the country and Appalachia, and noted from discussions with program administrators and teachers that health maintenance services are the most necessary, most expensive and most difficult to obtain. They must not only treat the child's disabilities, but must work with the parents as well to reduce the likelihood of further developmental disorders.

Many of these auxiliary services needs are still unanswered, and evidence suggests that these unsolved issues contribute to high rates of educational disadvantagement.

The NACEDC recommends that Part C be designated as a setaside to provide extra resources to areas which are characterized by high unemployment rates and economic depression, in both urban and rural settings.

(Mr. Chairman, we have provided a preliminary copy of the Rural Report to your Committee staff and will forward to all members as final printing is completed. We expect to issue this report to you before you conclude your scheduled hearings for the year.)

STATE ADMINISTRATION

The 1977 Legislative Report of the Council recommends that the one percent ceiling on state administrative costs be raised. Existing monitoring and technical assistance efforts available to local districts have been irregular at the state, regional and federal levels, resulting in many improperly administered or less effective local services.

State educational agencies are responsible for the administration of Title I programs implemented at their local district levels and the Council agrees with this intended recognition of states as the most effective vehicle for providing local technical assistance needs and compliance assurance. However, if we are to expect states to perform their legal functions, we must provide them the resources to do so, and define a pattern of state administration which has been determined as most effective. The Council believes state administration can become an effective mechanism with additional financial resources and administrative staff to perform on-site assistance to local school districts.

Federal officials must remain available for interaction at the state and local levels, however, to provide proper appeal procedures and to reduce the likelihood of excessive costs due to unresolved intrastate issues. An example of the costs which accrue when states cannot resolve a problem intrastate is evident in the precedent setting bypass cases for the nonpublic schools. Resolved through elaborate administrative procedures established by the U.S. Office of Education subsequent to the Education Amendments of 1974, administration of services to the nonpublic schools was contracted out for administration by an agency other than the local educational agency.
The cost proportion of the contract for administation is significantly higher than the costs of state administration.

The NACEDC recognizes the value of some past evaluations of Title I, but recommends that it is no longer necessary to mount large scale national evaluations. Recent U.S. Office of Education studies have resulted in implementation of improvements in state evaluations, and have established ten (10) technical assistance centers. This outreach effort now makes it possible to realistically expect that states and regional offices will be better prepared to fulfill their function to maintain data on Title I participants. This data could be expanded into longitudinal studies of students' performance.

State compensatory education programs are diverse as to the population served and as to their administrative relationship to ESEA Title I. In the Council's 1972 Annual Report the incidence of this relationship was described for the first time. Thirteen states still offer additional services to educationally disadvantaged children. Two states contribute resources which approximates the federal share. Considering the fact that so many eligible children are still not being provided any extra services, the NACEDC recommends that state compensatory education programs, if they are to be excluded from the comparability computation, must serve economically and educationally disadvantaged children. The NACEDC points out that although funds from federal sources may by used to serve eligible children enrolled in private schools, constitutionality questions may arise in the use of state funds for nonpublic school eligibles in some states. Caution should be exercised to note whether state compensatory education programs are devised as a means to purposely avoid serving eligible children enrolled in nonpublic schools. The performance of the nonpublic school with Title I children is exemplary, and it would therefore be remiss to encourage a policy which would force them to exclude Title I children from services.

Through its studies, site visits and reports, the Council has determined Title I to be effective. The next logical step is to increase the funding for the Act so that the remaining Title I eligibles be given the same opportunity for educational growth and development.

Refinements in the Title I statute are necessary in order to carry out the objectives set forth by Congress. The refinements are of an administrative and funding nature, with a few programmatic concerns. However, the NACEDC suggests that it is important to reinforce the underlying premise of Title I which is targeted to economically deprived attendance areas and to the educationally disadvantaged who attend school in those areas. The NACEDC recommends retaining the dual criteria of economic and educational disadvantagement as the foundation of the program. Discussion regarding the wisdom of focusing on children living in areas with high concentration of poor families has resulted in the Council reexamining this issue closely.

The Council has found the underlying premise of the Elementary and Secondary Education Act to be valid. Although it would be desirable to serve all educationally disadvantaged children with federal resources, such a program should not be undertaken until the children currently eligible are being served.

Ideally, all children should have the educational foundations necessary for them to constructively accept adult responsibility. The financial crunch experienced by local school districts makes it difficult to provide all the services necessary. It can nevertheless be expected that effective patterns of instruction and administration can operate in a cost effective manner.

States have been pressured by parents, and other citizens, to develop accountability models in basic skills and in minimum competencies. Approximately 30 states have initiated some activity in this regard and the graduating class of 1981 will have been exposed to a considerable amount of testing and performances to assure the value and validity of the high school diploma. Considering that in 1976, more than 64 percent of students entering high school graduated where as in 1960, only 41 percent completed high school; this approach will reach a widely representative majority of our students.

Through state legislation and through subsequent court decisions expected over the next five years, state responsibility and local responsibility for the proficiency of graduates will be articulated and redefined. State initiative in this regard has already defined the remedial work associated with the needs of children who do not pass the competency requirements as a State responsibility to be funded with state and local resources. The bottom line is that maintenance of effort provisions will assure that states and locals continue to fund minimum competency policies and programs, and in fact, guarantee that educationally disadvantaged students who are not poor will receive remedial work and extra attention in the basic skills. The costs, however, will not need to be borne by Title I. Caution needs to be exercised that this movement does not become a movement which lessens quality. With the trend of moving toward minimum requirements without lessening the quality of education, the NACEDC finds even stronger reasons today than twelve years ago, to maintain the dual eligibility requirement.

ADVANCE FUNDING

Advance funding for Title I, although improved in the Amendments of 1974, is still not a reality. Local school budgets are set far in advance of final appropriations for federal programs, and teacher contracts awarded at least six months prior to certainty about federal resource levels. Therefore, the NACEDC recommends that Congress appropriate funds for Title I one full year in advance of the applicable school year, so that LEAs can more properly coordinate and plan effective use of Title I to supplement local programs.

BASIC SKILLS

The NACEDC has experienced during site visits and noted in recent reports that Title I resources have been concentrated at the local level on basic skills. The Council has previously supported this concentration of funds and recommended in its 1977 Legislative Report that the stated objective of Title I should be to raise the child's level of achievement in reading, mathematics and language arts. Noninstructional Title I services which are not designed to raise educational attainment dilute the priority which must be placed on the basic skills.

The Council would recommend a mandated concentration on basic skills only to 80% of total local expenditures. Local districts should have some flexibility to expend, when necessary for program improvement, a small remaining percentage of funds for training parents, teachers or administrators, and this should be an ongoing, though limited, area of program concern in planning effective service delivery.

The Council also suggests that many diverse instructional routes are available which generate increased levels of basic skills attainment among Title I students. The criteria for effectiveness of instruction should be student performance being raised significantly and more effectively in the basic skills. For example, the Council has seen music programs which, when evaluated, double the performance with students in standard remedial programs, and quadruple the performance of students who are eligible to participate in Title I but who, for lack of funds, were not treated. This program serves children at a cost of $78 per student, whereas others which are more traditional cost from $193-350 per student.

PARENT INVOLVEMENT

Parent involvement should be strengthened to include parents of all eligible children on the Districtwide Parent Advisory Council and on the target school advisory council. This would replace the current regulation requiring inclusion of parents of participating children.

Concerns of the stakeholders is operating on parent advisory councils, the Council finds, and the stakeholders on PACs are parents of elementary school students. Although programs are legal if they serve a target population of preschool or adolescent youngsters, as presently constituted PACs do not have it in their interest to approve such a program, since it would dilute the services to Title I children now being served. With increases in the funding level, it is consistent to expect that all parents of all eligible children would serve on the PAC. Council site visits have witnessed exemplary preschool programs cut back, when the Title I allocation was reduced during the formula change. Our point is, there was no representation from the preschool parents on the PAC when the decision was made.

An Achilles heel for parent involvement is the degree of state authority over the program. Every other aspect of Title I is regulated at the federal level, except parent involvement. The NACEDC has found that the complaint procedure breaks down for cases on parent activity because the regulatory responsibility is inconsistent with the rest of Title I. State regulations often conflict with the federal statute, which makes the only resolution possible expensive, tedious, and time consuming. This is an unnecessary expense to parents and to the Federal Government. The NACEDC recommends that the legislation be changed to make federal and state regulations more consistent with one another.

The ten regional technical assistance centers developed by the USOE Office of Program Planning and Evaluation, have potential for generating valuable technical assistance to states and LEAs regarding Title I. However, the NACEDC found that the present plan does not provide for technical assistance to Districtwide Parent Advisory Committees. With the mandated involvement of PACs in the design, planning, implementation and evaluation of Title I, it would be consistent with encouraging a constructive working relationship, to have the resources available through these centers also available to the PACs. The NACEDC recommends that technical assistance be available to PACs and their members through the ten regional technical assistance centers.

DATA COLLECTION REQUIREMENTS

Data collection requirements should be simplified to the extent that program integrity is retained and unnecessary paperwork is eliminated. The NACEDC has determined that opportunities exist in Title I to reduce paperwork without interfering with the implementation of the Act. Reduced evaluations of a national scale, centralizing data collection to the National Center for Educational Statistics, requiring a full application every five years, with amendments only sent forward for approval, and data requirements adjusted for the size of the LEA are effective procedures for reduction of paperwork. Title I funds are distributed to 82% of the nation's school districts. More than 85% of these school districts enroll less than 5,000 students. Therefore, data requirements which are appropriate for large districts, or for districts in which the Federal Government has a special interest, are often too cumbersome, inappropriate and unnecessary for most districts receiving Title I. Congress can relieve these hardships by amending Title I to address appropriately these more efficient procedures.

STATE PROGRAMS

States must be held accountable for projects they approve, and should be responsible for repayment of Title I audit exceptions after the audit is resolved, if the state approved the application. Funds which are scheduled to be returned to the U.S. Treasury as a result of audit exceptions are funds which did not target properly to educationally disadvantaged children. The NACEDC recommends that an amendment allow repayments required by an audit resolution be spent on Title I eligible children in the district involved.

State Agency Programs for migrant children, neglected and delinquent children, and for handicapped children must be maintained at the 100% level off the top of the Title I appropriation. The federal responsibility is clear for this group of children with special needs. Title I should mandate parent involvement and compliance with Title I program goals in State Agency Operated Programs.

MAINSTREAMING

The Council believes that either pullout or mainstream instruction can be the most effective instructional technique for raising the basic skills attainment by Title I children, depending upon the nature of the instruction and the characteristics of the students. In planning service delivery styles, the Council would recommend that the overriding factor in choice of instructional setting be a technique which is the "most effective," within the confines of the law.

Hesitancy to implement the "most effective" technique may develop among administrators with misconceptions or unnecessary concern over compliance with the supplementary program requirement of Title I law. The Office of Education and the National Institute of Education are aware of mainstream learning systems which legally deliver more effective instruction. Therefore, the Council recommends that USOE develop a technical assistance manual which outlines those legal and effective practices which are possible for Title I services.

The NACEDC recommends that mainstreaming be used where educationally advantageous.

NONPUBLIC SCHOOLS

Service to eligible children enrolled in the nonpublic schools has been improved through the possibility of implementing the bypass authorized by the Amendments of 1974. However, lengthy and cumbersome administrative procedures undercut the implementation of the bypass, and add considerable cost and paperwork. The participation of the Council in the Barrera Case which was required by the Eighth Circuit Court of Appeals, has given the Council special insight into the problems associated with delivering programs to eligible children enrolled in the nonpublic schools. The Council recommends that direction be given by the Congress to USOE to revise its regulations for the bypass so that costs can be reduced by streamlining administrative procedures, and program services can be delivered to students.

LOWERING THE AGE OF ELIGIBILITY TO THREE

Preschool programs are now permitted within Title I, but the preschool population is not counted in the formula of eligibles. The NACEDC recommends lowering the age of eligibility for count to 3 years. This should provide an incentive to districts to serve preschool children in target attendance areas. Many districts have programs for some preschool children out of local resources, and this recommendation is designed to provide similar services for Title I children. The Council appreciates your consideration of this recommendation which is consistent with the recommendations of our 1976 Annual Report, but has asked that I point out, that this provision does not totally satisfy the Council's concerns regarding the provision of services to preschool children from federal sources.

SPECIAL PROJECTS

The Council requests that this subcommittee give attention to parent education and training programs with a line item setaside in the Special Projects section of the Act. Programs should begin as early as the elementary schools, and continue; coordination should be given with Adult Education and training courses; specific attention for Title I parent advisory council training is also necessary.

In conclusion, the National Advisory Council on the Education of Disadvantaged Children (NACEDC) has determined Title I to be an effective program which is critically underfunded. In 1965 this Committee designated the children who are eligible to receive services under Title I. Yet many of them are still not served due to lack of funds.

Title I is successful and the program is effective. It is now necessary for Congress to appropirate sufficient funds to fully serve the group which they have identified as both economically and educationally disadvantaged, before considering adding the remainder of low achievers to the eligible group.

Finally, the Council has attached for your reference a copy of the 1977 Report on Legislation and a current Statistical Appendix. The Council appreciates the opportunity to share these findings with you, and is available to provide additional materials as you require them, during the coming months of review of the Elementary and Secondary Education Act.

LEGISLATIVE REPORT

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

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SEPTEMBER 1977

LEGISLATION REPORT

INTRODUCTION

During the 95th Congress, Title I, Elementary and Secondary Education Act will face a most critical reexamination on reauthorization of the law.

The National Advisory Council on the Education of Disadvantaged Children (NACEDC) believes it necessary to contribute to that reexamination. It has gained a unique perspective from frequent interchange with students, parents, teachers, administrators, government officials, researchers and others involved in Title I. This report contains an enumeration of principles which should be considered important to any legislation designed to provide educational services to disadvantaged children (hereafter referred to as the child). Those components of Title I which have proven successful should be retained.

Significant past recommendations contained in previous reports (1966-1976) are appended.

PROGRAM OBJECTIVES AND FUNDS DISTRIBUTION

The NACEDC recommends that the primary objective of Title I programs be to raise the educationally disadvantaged child's level of achievement in the area of the basic skills (reading, mathematics, and language arts).

The stated objective of Title I should be to raise the child's level of achievement in reading, mathematics and language arts. Noninstructional Title I services which are not designed to raise educational attainment dilute the priority which must be placed on the basic skills. Where Title I programs are specific in purpose and design, they are more effective and can be better assessed. Effectiveness can be improved by a greater specification of the expected outcomes rather than of the procedures to be used.

The NACEDC recommends that there be a limitation on the use of Title I funds for support services.

The determination of the child's educational needs may comprise an identification of instructional and supportive services. Both types of services are important to the overall educational development of the child. There is a higher probability that more supportive services (medical/dental, nutrition, transportation, etc.) are necessary for children of very poor families.[1/] Title I funding of support services should be used only temporarily, if needed, to expedite objectives of educational achievement until more appropriate resources can be provided.

The NACEDC recommends that the use of Title I funds for capital construction of facilities be specifically prohibited.

Considerable attention has been given by school officials in many areas to the economical use of facilities to offset declining enrollments and rising maintenance costs. In isolated instances where facility construction, renovation, repair, or improvement is deemed necessary, funds are available from more appropriate local, state or federal resources.[2/] These alternative sources of funds should be used by state and local educational administrators.

The NACEDC recommends that federal funds for services to the educationally disadvantaged continue to be distributed to states and local educational agencies on the basis of economic criteria and then utilized within the eligible program locations on the basis of highest educational need.

The members agree with the original underlying dual premises of Title I. First, there is a correlation between educational and economic deprivation. Secondly, high concentrations of low income families prevent local educational agencies from having sufficient resources to provide adequate programs for their educationally disadvantaged children.

FEDERAL RESPONSIBILITY FOR SPECIAL CHILDREN

The NACEDC recommends that the Federal Government exercise a direct responsibility for special groups of children (migrant, nonpublic school, American Indian, neglected and delinquent) where local or State obligation is not acknowledged or existent.

Education in the United States has been fundamentally structured upon a duality of local and state responsibility. In addition, public education has developed management and financing procedures based upon the resident child in attendance.

Problems of responsibility and service to the child often arise when a student is considered a nonresident or is not in attendance at a public school. Thus, after appropriate procedures and final determination by the Commissioner of Education, federal financing should be modified. The Federal Government should reserve the right to exercise direct or special provisions of educational funding to the agency it determines to be most appropriate and responsible for serving the special group of children.

The *migrant child*, seen as an educational transient, cannot be viewed as the ongoing responsibility of a district or state other than for the time that he or she is present in that area. Such a pupil will move from district to district and state to state in the course of the school year. Often, the current school district of residence or the state is negligent in its responsibilities to provide the adequate educational services necessary for the migrant child. As transients, with no local status as resident constituents little recourse is available for migrants to alleviate such oversights. Migrant children are ones for whom the Federal Government should retain the right of providing direct funding to a responsive local agency for administration of special services. Funds for this purpose should be directly proportional to the number of migrant children to be served and the cost incurred by the local or state educational agency of residence.

The *American Indian child* the beneficiary of a unique cultural heritage has often failed to receive those necessary services which promote full educational development. As the Indians continue to assume greater control of their nonreservation, reservation and boarding schools under P.L. 93-368, the Indian Self-Determination and Education Assistance Act, it is expected that programs will respond to the cultural, linguistic, social and economic needs of their children. The historical relationships of the tribes and nations to the Federal Government have created a unique responsibility beyond the local and state levels. This has established the necessity of a special and direct interface of Indian educational programs to the Federal Government.

Neglected and delinquent children in institutions are generally deprived of social and educational benefits which are enjoyed by the noninstitutionalized child. State and local educational agencies are responsible for providing educational services to these children. However, additional services may also be needed to overcome past educational disadvantagement.

In fiscal year 1977, state educational agencies were allocated $28,841,151 of Title I funds to serve 71,531 neglected or delinquent children in state correctional institutions.[3/] This amount is significant and should be effectively administered. In instances of state or local noncompliance to serve these children a provision for direct funding for educational services should be included in the Title I law. This provision should allow for appropriate withholding of funds when necessary. A final determination should be made by the Commissioner for an appropriate alternative agency to serve neglected, delinquent or children in state institutions.

Some Title I eligible *children enrolled in nonpublic* schools may need to rely on greater assistance from the Federal Government. Differences among the states in their laws, educational practices and community attitudes sometimes affect the provision of services to eligible children enrolled in nonpublic school. Where this obstacle militates against equitable Title I participation, the Federal Government must assume that responsibility. Such action should be taken only when there has been a final determination by the Commissioner that the local or state educational agency with primary responsibility has substantially failed to provide the necessary services.

The bypass provision of the current Title I law is an instrument of response to this variation among states. This is an effective and acceptable federal alternative where such a situation exists. The procedures allow all parties involved ample opportunity to respond before a final determination is made by the Commissioner.

ESEA TITLE I FUNDING FORMULA

The NACEDC recommends that the funding formula be revised to simplify economic criteria and collection of statistical data on poverty children; provide uniform criteria and appropriate allocation procedures for local districts whether organized on a state, county or district basis, and; provide adequate allocations to urban areas with high concentrations of low income families.

The formula is a mechanism for financing the delivery of Title I services to needy children. Its present structure has created debates among urban, rural, regional and intrastate interest groups which have resulted in a concentration on dollars rather than children. The formula has been a distracting element in the program to serve children who reside in school districts with high concentrations of low income families.

Accurate assessment and application of the most current census data is a necessity for formula allocations. The advent of the five-year mini-census is a step toward this goal. In addition, many school districts which now employ various computer projected estimates of student populations and characteristics for their planning purposes can forecast with reasonable accuracy Title I eligibility data. A nationwide system should be explored by the Office of Education and, if feasible, employed in the funds allocation process.

The current complexity of the formula data base had produced late allocations each year. The NACEDC recommends that the U.S. Office of Education employ a firm cutoff date by which accurate data must be received for Title I allocations.

The current procedure which bypasses the state in favor of the county level does not allow equalization within a state. The current formula allocates funds at the county level, with sub-county allocations carried out by state educational agencies with the U.S. Office of Education's approval. The allocation should be shifted to the state level. State educational agencies could then allocate funds on the basis of the most current counts of children needing services by district.

The current formula is not sensitive to the acute needs of rural and territorial areas. This results in allocations disproportionate to the wide range and intensity of services needed.

The formula should reflect regional cost differentials usually not covered in routine mechanisms of formula allotments. Alaska, Hawaii and the territories are examples of this disparity which presently exist. The NACEDC recommends a differential in allotment for Alaska, Hawaii and the territories to address extreme disparities of costs in providing services comparable to those provided in the contiguous states; such a distinction should reflect the current cost of living differential for federal employees.

INDIVIDUALIZED NEEDS ASSESSMENT

The NACEDC recommends that Title I legislation require an individualized needs assessment.

Multi-faceted Title I programs have been designed to render educationally related services to the child. Many of these services, while appropriate for some portion of the enrolled students, are not suitable or necessary for every eligible child enrolled in a Title I program.

The present law provides encouragement for a written individualized educational plan agreed upon jointly by the local educational agency, a parent or guardian, and when appropriate the child. The intention of such a provision was to encourage the organized planning of proper educational services to each child. It would also serve to help reduce the likelihood of duplication or omission of necessary services. An individualized educational needs assessment should form the basis for the determination of all educational services necessary for the child's development. It should specifically identify the types of Title I services to be delivered. Individualized needs assessment is prerequisite to effective educational planning. Written individualized needs assessment and educational plans should be required.

The NACEDC recognizes the relationship of all of a child's needs to his educational attainment. It does not, however, view Title I as the sole source for providing the range of services which may be necessary. Where the educational needs assessment identifies a need of a noninstructional nature, other resources should be utilized.

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PARENT INVOLVEMENT

The NACEDC recommends that any compensatory education legislation contain components which provide for a direct involvement of parents in an advisory role to the overall program serving their children.

The Council has confirmed the importance of the home/school relationship through its discussions with local compensatory education program administrators, teachers, parents and students. It has concluded that the achievement potential and complete educational growth of the child in elementary and secondary schools is enhanced by parental involvement in the educational process.

The child has, in general, less opportunity for meaningful educational experiences than his more affluent fellow students. Knowledgeable adult supervision, access to educationally stimulating activities and resources and social development activities are examples of meaningful educational experiences often denied the child. The lack of meaningful educational experiences limit a child's readiness for the school curriculum. This could continue to be a limiting factor throughout his life unless there is effective intervention such as that provided by compensatory education programs.

Parental involvement in a child's educational program will help the parent to understand the educational needs and activities necessary to meet those needs. The parent may then serve to increase the effectiveness of the compensatory education programs.

Cultural differences between the child's home and school may create an educational disadvantagement for the child in the classroom. Parental involvement in the child's curriculum increases the teacher's and administrator's understanding of cultural factors which influence educational attainment. It also provides the parent with insight into the important role of the home in enhancing the child's education.

Parental involvement in the overall program effort, in an advisory capacity, is an essential element for educational growth and achievement. Parents immediate understanding of environmental conditions will contribute to the planning of more effective programs. Parental involvement also acts as an extra-institutional force for change and improvement in the educational services provided to children.

Principals and other educational administrators must recognize that parents of disadvantaged children frequently experience a variety of hardships which tend to limit their participation in the education of their children. Planning of parent activities should reflect efforts to overcome limitations of time (especially for single parent families), working schedules, or access to transportation, in providing programs to train and utilize parents and thereby enhance the opportunity for their involvement.

CITIZEN PARTICIPATION

The NACEDC recommends that legislation encourage citizen participation at the state and local educational levels to facilitate the planning, monitoring and evaluation of Title I programs.

Many of the objectives of Title I programs can best be accomplished with the assistance of broadly representative citizen participation at the state and local levels. This representation could be drawn from parents of eligible children, private industry, state economic and manpower development agencies, community institutions of higher education, experts in educational programs for disadvantaged children, local public and nonpublic educational agencies, and the general public.

Such groups should be permitted to advise the state educational agency and the state legislature on the development of Title I policy matters including the preparation of long range and annual program plans as well as:

(1) The accountability of state and local Title I programs;

(2) The comparability of services to the children in attendance;

(3) The coordination of Title I program activities with other federal, state and local programs to achieve the maximum educational benefit from the dollars spent;

(4) The adequacy of Title I programs designed to meet the needs of special children for whom local or state responsibility is lacking or unfeasible; and,

(5) The statewide testing program utilized in needs assessment.

EVALUATIONS AND TECHNICAL ASSISTANCE

The NACEDC recommends that funds allocated for national evaluations be reduced.

NACEDC has stated that the mushrooming educational evaluations at the national level are not cost effective.[4/] These evaluations do not provide a correlative amount of assistance to the decisionmaking process affecting educational programs for disadvantaged children.

The NACEDC recommends that national evaluation efforts be limited to developing uniform Title I program standards, evaluation instruments and reporting procedures.

State and local educational agencies may then implement evaluations of program effectiveness and provide the Federal Government with the desired information on Title I programs.

The NACEDC recommends that appropriations for Title I technical assistance to the U.S. Office of Education and the ten Office of Education regional offices be increased.

Increased technical assistance is needed at the level of service to the child. Regional offices currently assist state and local educational agencies in the planning, application, operation and administration of Title I programs. The effectiveness of these activities is severely limited by present manpower and budget allocation limitations. Sufficient budget allocations would permit regional program specialists to guide administrators toward accomplishment of their compensatory education objectives. Such specialists may participate in the preparation of program reports and program reviews to assure state and local attention to the needs of the children to be served.

TITLE I AUDITS AND SANCTIONS FOR NONCOMPLIANCE

The NACEDC recommends that Health, Education, and Welfare Title I audit policies and procedures be revised to, (1) reduce unnecessary paperwork; (2) resolve audit exceptions in a timely manner; and, (3) confine audit activities to compliance with federal requirements.

The Health, Education, and Welfare Audit Agency could be the most effective vehicle for insuring local compliance. The present policies and procedures utilized by the audit agency severely limit such effectiveness. Extensive revisions are necessary.

Health, Education, and Welfare auditors, who spotcheck state and local educational agencies, often do not fully understand the objectives of local Title I programs. This has been primarily due to limited interaction between audit and program divisions within Health, Education and Welfare. Interagency attention must be given to developing coordination in areas of Title I program operation and related audit practices. The NACEDC has previously identified specific areas in which improved coordination is desirable. These improvements in the system are less costly, more sensitive and more sensible. Among these were:

(1) audit teams be trained in the program they are to review;

(2) that a program officer from the State be included with the Health, Education and Welfare audit team for the complete audit;

(3) that States be required to spend the amount they would otherwise have had to return to the U.S. Treasury on Title I eligible children in the audited district;

(4) that parent advisory councils of local educational agencies being audited by Health, Education and Welfare have the opportunity to attend the audit exit conference and have the same opportunity as officials to provide written and verbal comments on the draft audit report;

(5) that auditors be required to notify state and/or local compensatory education parent advisory councils when they contact the state educational agency relative to a scheduled audit visit; and,

(6) that a bulletin be published at the state level which is disseminated to state and local parent councils periodically summarizing the scope, findings, recommendations, and disposition of all audits and program reviews.

Implementation of such improvements will enhance local program compliance.

Local program administrators have voiced their dissatisfaction with excessive data collection and reporting requirements. The paperwork compiled is of no practical use in the effective operation of the local program. It is produced simply to facilitate audit reviews. Clarification of the minimum data necessary for federal audits can ease this burden and still produce the documentation necessary for compliance.

Upon completion of the audit, any exceptions identified by the Health, Education and Welfare auditors should be resolved in a timely manner. Lengthy hearing procedures and failure to negotiate recoverable reimbursements have resulted in several millions of dollars in unrecovered federal funds. Local administrators are also frustrated in their desire to understand the findings leading to the exception and recommended modifications in their procedures.

The majority of audit exceptions involve instances of commingling or supplanting of federal funds. Local educational agencies utilize such practices when attempting to integrate Title I activities within the framework of the regular school program. To reduce the likelihood of audit exceptions administrators often institute pullout programs for Title I services. This procedure physically separates the Title I students, teachers and resources.

Existing audit practices are the primary motivation for this determination. Improved auditing techniques and data records could alleviate this administrative practice. The determining factor of Title I pullout procedures or instruction in the regular classroom should be the "highest likelihood of service effectiveness."

Title I programs must respond to state and local regulations in addition to those imposed at the federal level. In many instances federal audit personnel are only knowledgeable of federal regulations, and may view administrative practices responding to state and local educational requirements as improper. Federal audit personnel must become familiar with all guidelines which impact upon the local education agency programs. An isolation of federal regulatory and administrative concerns must be achieved which does not subjugate state and local administrative rights and practices. Federal audit practices should only identify and reflect local program responses to federal requirements.

STATE ADMINISTRATIVE COSTS

The NACEDC recommends that the minimum floor be raised to $250,000 for administrative costs for meeting the federal requirements in the management of Title I at the state level.

Participation in federal programs should not require a disproportionate amount of state funds being applied to administrative costs of the federal programs. The Council has reconsidered the administrative costs provision of Title I, and notes that the floor figure of $150,000 has not been changed since 1966, and needs to be adjusted to reflect cost-of-living increases of the 1970's.

FOOTNOTES

1/ Evaluating Compensatory Education, An Interim Report on the NIE Compensatory Education Study, December 30, 1976. Chapter III, pp. 18-23.

2/ Laws providing Federal financial assistance to local and/or State educational agencies for construction of educational facilities.

a. The Library Services and Construction Act (P.L. 93-380);

b. The Vocational Education and NIE Amendments of 1976 (P.L. 94-482);

c. Emergency School Aid Act (P.L. 92-318);

d. School Construction in Areas affected by Federal Activities (P.L. 815);

e. Economic Development Act of 1976 (P.L. 94-487); and,

f. Local Public Works Capitol Development and Investment Program of 1976 (P.L. 94-369).

3/ Statistics summarized from Office of Education Title I Allocation Report.

4/ "Can We Afford Deficient Evaluations?" An Interim Report by NACEDC, January 23, 1976.

SUMMARY OF PAST COUNCIL RECOMMENDATIONS

(1966-1976)

PARENTAL INVOLVEMENT

NACEDC has supported meaningful parental involvement relating to educational services for eligible children in the past by recommending that parent advisory councils be mandated at the local educational level with representatives on a district-wide level; that these parent advisory councils receive appropriate provisions and guarantees of technical assistance and access to public information; that parent advisory councils be involved in the planning, development, operation and evaluation of compensatory education programs; that local initiative be maintained so that programs are developed to meet the specific needs of educationally deprived children; and inservice training of parent advisory council members be mandated and provided for by special incentive grants through states.

FEDERAL RESPONSIBILITY FOR SPECIAL CHILDREN

The Council has consistently supported federal responsibility for special children by recommending that the Office of Education accumulate data on migrant children and utilize that data for effective delivery of services; that a comprehensive migrant program be mandated and that the Uniform Migrant Student Record Transfer System (UMSRTS) be used in determining the number of children served for funding purposes and that a bilingual educational component be included in the migrant program.

NACEDC recommended that compensatory education legislation contain mandates for nonpublic school children's participation and that nonpublic school administrators be involved in the total planning process for compensatory education projects and also recommended that a bypass mechanism be provided when there is a failure to provide nonpublic school children with effective participation on an equitable basis in Title I programs.

The Council has recommended that federally funded programs for neglected and delinquent children be reviewed and consolidated; that similar studies be consolidated at the Department of Justice; that public programs be set up to train early childhood center personnel to identify and refer abused and neglected children to authorities; that program eligibility requirements be clarified so that institutionalized children's needs will be met from year to year and that an educational component be included in the Juvenile Justice and Delinquency Prevention Act of 1974.

CLARIFICATION OF OBJECTIVES

The Council has recommended against general aid of federal funds to schools, compensatory education is a proven need and should hold federal priority; Council has endorsed concentrating funds where the need is greatest so limited dollars have a genuine impact rather than being dissipated in laudable, but inconclusive efforts. Council has not recommended set objectives for Title I other than raising the educational level of educationally disadvantaged children.

TITLE I FUNDS AND CONSTRUCTION

The Council has recommended against general aid of federal funds to schools, but has not recommended specifically that Title I funds not be spent on construction of schools for Title I programs.

COMPARABILITY

The Council has supported the concept of comparability as a viable requirement for federal education programming accountability and should be retained. Comparability reviews should reflect comparable inputs of services to children, not merely count the numbers of teachers and textbooks; and should be expanded to include the concept that the child's special education needs are being met by State and local funds.

EFFECTIVE USE OF FUNDS: EVALUATIONS

The Council has devoted an Interim Report to the subject of evaluations because it is an essential element of the effective and sustained upgrading of program performance. It has pointed out that the practice of evaluations, requires great care and the government can learn some valuable operational lessons for this and other occasions: the need to plan well allowing ample time to carry out the plan well; the need to coordinate, the need to derive maximum value from existing sources and records, the need to insist on representativeness, the need to structure the evaluation so that it really measures lasting impact, the need to imaginatively consider alternatives, and the need to truly welcome and involve public participation.

DISTRIBUTION OF FUNDS

Council's past recommendations are in keeping with the present recommendations. Council has recommended that Title I ensure that those children who are most economically deprived be served first, and that funds be concentrated where the need is greatest. However, no specific recommendation has been made to deny Title I funding for construction or noninstructional services before.

FUNDING FORMULA

The past recommendations of the Council were concerned with facilitating the effective delivery of service to educationally disadvantaged children. Previous recommendations include: the use of AFDC statistics in the Title I formula which would indicate those children from families in excess of the Orshansky index; and the provision that all deprived children from families with incomes the same or lower than the Orshansky index be eligible; also in-kind benefits received by those families in poverty be counted as income for the purposes of eligibility for poverty-based federal programs. The Council has supported plans to update the present way of counting Title I children and proposals for change for the most equitable formula possible. It has also stated that a single standard of poverty based upon poverty statistics for use in federal funding would simplify matters.

SANCTIONS FOR NONCOMPLIANCE

The Council has recommended sanctions for noncompliance in the past by requiring states to spend from their own funds an amount equivalent to the audit exception on Title I eligible children according to Title I regulations in the local educational agencies where the questionable expenditures occurred.

STATE ADVISORY COUNCILS

Council has recommended the formation of State Advisory Councils to work closely in the preparation of the State Plan (or Application, whichever results). Council has also recommended that state advisory councils include elected members of mandated parent advisory councils for Title I who are representative of parents of children from low-income families.

INDIVIDUALIZED NEEDS ASSESSMENT

NACEDC has recommended that the local role should be that of program design and individual needs assessment of the disadvantaged child in partnership with the parents. Council also has recommended that legislation and guidelines emphasize alternative educational models which maximize individualization of instruction and wherein performance, related to expenditures, will be considered the basis for determining program effectiveness; and Council has considered individualized needs assessment which determine the development of programs to meet the specific identified needs of educationally deprived children to be a key provision in the Title I program.

STATISTICAL DATA

85

APPENDIX A

CURRENT NATIONAL TITLE I STUDIES AND EVALUATIONS

Name of Study	Expected Cost	Description of the Study	Current Status
Office of the Assistant Secretary for Education (ASE) (1) Educational Policy Research Center Studies	$962,000	Stanford Research Institute is examining four policy areas with respect to Title I: (1) Educational gain attributed to Title I participation? (2) Program management problems and trends; (3) Parent Advisory Councils; and, (4) Interaction of Title I and other education programs.	Reports will be available September 30, 1977
(2) Feasibility Study of Estimating Children in Poverty by Local School Districts (4/1/75 - 6/30/77) P.L. 93-380, Sec. 822(b)	*NA	ASE in conjunction with the National Center for Educational Statistics is conducting a study to evaluate the alternative methods for updating estimates of the number of children living in districts and states.	Interim report completed - 3/76; final report due mid-1977.
(3) Survey of Income and Education (1/15/75 - 6/30/77) P.L. 93-380, Sec. 822(a)	*NA	ASE in conjunction with the Bureau of the Census has conducted a sample household survey to assess the number of children aged 5-17 who live with families at or below the poverty level in each State. Other information including income, migration, food stamp recipiency, etc., will be compiled. A report will be made to Congress on the accuracy and utility of this information.	Reports due: 1. Poverty Number-12/31/76 2. Other information 1977 3. Accuracy of data 6/30/77
(4) Development of New Approaches to Determining the Needs of Educationally Disadvantaged Children	None—All FICE members volunteer.	FICE subcommittee on Minorities and Disadvantaged populations is examining different approaches to identify educationally disadvantaged children, and their educational needs, along with new Federal strategies for dealing with them.	Analyzing data from Income Survey and other sources.
(5) Study of Poverty Measures of Poverty (9/15/74 - 12/31/75) P.L. 93-380, Sec. 823	*NA	An interagency subcommittee of the ASE Task Force on the Disadvantaged has reexamined the definition of poverty used in the current Title I allocation formula. Included a review of the available information, and an investigation of the effects of alternative measures of poverty as used in the Title I formula.	Submitted: 4/30/76.

*Not Available

APPENDIX A

Name of Study	Expected Cost	Description of the Study	Current Status
Office of Education (OE) (1) Study of Compensatory Reading Programs in Elementary Grades (6/30/75 - 12/31/75)	$3,403,678 obligated funds	OE is providing a nationwide assessment of compensatory reading projects including: 1. overall impact of programs; 2. effectiveness levels of different approaches; and, 3. varying costs of different approaches.	Data collection completed; final report available shortly.
(2) Sustaining Effects of Compensatory Education on Basic Cognitive Skills (7/75 - 7/80)	$13 million	Began its first operational year, 7/1/76. Data collection activities in the longitudinal sample involved 326 schools with 110,000 students in grades 1-6. Student achievement data will be collected during school year 76-77. A survey of 15,000 households will be conducted this Spring (77) to determine the number of eligible Title I children who do or do not receive services.	Data will be collected for three years. Reports will be available each year in January.
(3) Evaluation of Title I Programs for Neglected and Delinquent Children in State Institutions (9/76 - 6/77)	$512,464	This national evaluation of state-operated programs began Fall 76 with site visits to 100 institutions in 40 States to examine characteristics and operations of these programs. Impact of the Title I services on students will be examined in 30-40 of the selected state institutions, beginning Spring 1977. The study will also include suggested evaluation models and reporting procedures.	Final report will be issued after the 1977 - 78 school year. Report on the sample will be available in June, 1977.
(4) Study of Title I Migrant Education Programs (2/76 - 7/77)	$798,652 (from Title I monies)	This national evaluation study will assess the overall impact of the program on student attitudes, personal development, and achievement in reading and math. An evaluation handbook will be developed to aid State and local educational agencies in evaluations and include formats for reporting results. The study will also validate the data in the Migrant Record Transfer System for funding purposes.	In planning stage-Operational phase will begin Summer, 1977, with data report due 1980. Evaluation handbook due Fall, 1977. MSRTS data will be collected mid-1977; final report due February 1979.

APPENDIX A

Name of Study	Expected Cost	Description of the Study	Current Status
(5) Development and Implementation of Title I State Evaluation Models (6/75 - 6/77)	$701,195	Ongoing effort by OE to develop, field test, and implement evaluation models. Several States and LEAs have volunteered to "field test" models and reporting forms during current school year. OE will also establish regional Technical Assistance Centers to assist States in familiarizing LEAs with the proposed models and reporting forms.	Conducting regular workshops for State personnel to familiarize staff with models and reporting system.
(6) Development of Models for Evaluation and Reporting of Non-Instructional Services in Title I (6/76 - 9/77)	$376,426 (from Title I monies)	The study will attempt to develop evaluation procedures and reporting models for State and local use in the area of non-instructional services. Twenty-five sites will be selected for case studies and field tests of the evaluation models and reporting procedures.	Initial study begun June 1976. Field tests to begin February 1977. Final report due September 1977 with evaluation handbook.
National Institute of Education (1) District Survey I	$1.5 million	Provide descriptive data on 100 school districts nationwide to determine the decisionmaking, planning, evaluation, communication and managerial practices effecting Title I projects in those sites.	Data has been collected and is being analyzed. Results and reports are due by the end of July 1977.
(2) Demonstration Districts on Alternative Allocation Criteria	$5.5 million	Thirteen school districts have been selected to demonstrate the effects of changing the rules for allocating Title I funds within school districts. The districts have changed the eligibility criteria from poverty to achievement and/or changed the number of schools and pupils who participate.	All districts have been selected and will operate as Demonstration Districts through the 1977-78 school year.
(3) A Study of Instructional Dimensions	$1.7 million	Designed to assess whether programs which differ along structured individualized instruction in reading and mathematics also differ systematically in their effects upon students. Four hundred Title I or Title I eligible are involved in grades 1-3 in five States are involved in the sample. (not designed to be nationally representative)	Study will progress throughout 1977-78 school year.

Name of Study	Expected Cost	Description of the Study	Current Status
(4) Survey of Federal and State Title I Regulations	$155,000	The survey was conducted in a geographically representative sample of 10 States. It is analyzing the degree of clarity and consistency in Federal Title I regulations, the differences and similarities between these and State regulations, and problems of implementation at the State and local levels.	A final report is due in the next few months.
(5) Survey of State Administration Practices	$792,000	This survey is to provide a description of the nature and amount of State management activities in the administration of Title I, primarily relating to the interaction between SEAs and LEAs. It also will identify variables which are correlated with State management activity.	Survey data will be collected in Fall, 1976 and case study data will be collected from selected LEAs after January 1977.
(6) Study of the Impact of Parent Involvement Upon Management and Administration of Title I at the Local Level	* NA	Four to six case studies will be conducted to identify different forms of parent involvement in Title I, determine which organizational characteristics of Title I programs are associated with and affected by different types and levels of parent involvement. The study will also identify the community level determinants of parent involvement, and administration which affect the level and nature of parent involvement in the program.	Study will be conducted during 1976-77 school year. The final report is due September 1977.

* Not Available

APPENDIX B

STATE FUNDS FOR COMPENSATORY EDUCATION

	1974	1975	1976*	1975-76
TOTALS				
1. Alabama	0	0	0	
2. Alaska	0	0	0	
3. Arizona	0	0	0	
4. Arkansas	0	0	0	
5. California	141,250,000	126,750,000	107,600,000	Pre-K, Elem., Sec.
6. Colorado	0	170,000	0	
7. Connecticut	7,000,000	7,000,000	7,200,000	Pre-K, Elem., Sec.
8. Delaware	0	0	0	
9. District of Columbia	0	0	0	
10. Florida	5,916,192	0	0	
11. Georgia	0	0	10,200,000	
12. Hawaii	1,600,000	1,600,000	9,900,000	Pre-K, Elem., Sec.
13. Idaho	0	0	0	
14. Illinois	0	0	0	
15. Indiana	0	0	3,000,000	
16. Iowa	0	0	0	
17. Kansas	0	0	0	
18. Kentucky	0	0	0	
19. Louisiana	0	0	0	
20. Maine	0	0	0	
21. Maryland	10,000,000	9,799,000	9,500,000	Elem., Sec.
22. Massachusetts	0	0	0	
23. Michigan	22,500,000	22,500,000	25,500,000	
24. Minnesota	0	5,000,000	0	
25. Mississippi	0	0	0	
26. Missouri	0	0	0	
27. Montana	0	0	0	
28. Nebraska	0	0	1,600,000	
29. Nevada	0	0	0	
30. New Hampshire	0	0	0	
31. New Jersey	0	0	0	
32. New Mexico	0	0	0	
33. New York	47,000,000	149,500,000	146,000,000	Pre-K, Elem., Sec.
34. North Carolina	0	0	0	
35. North Dakota	0	0	0	
36. Ohio	33,337,400	38,000,000	33,300,000	
37. Oklahoma	0	0	0	
38. Oregon	1,000,000	1,000,000	1,000,000	
39. Pennsylvania	0	0	1,000,000	
40. Rhode Island	2,000,000	2,000,000	2,000,000	
41. South Carolina	0	0	0	
42. South Dakota	0	0	0	
43. Tennessee	0	0	0	
44. Texas	0	0	25,400,000	
45. Utah	600,000	600,000	0	
46. Vermont	0	0	0	
47. Virginia	0	0	9,300,000	
48. Washington	8,100,000	4,600,000	5,000,000	
49. West Virginia	0	0	0	
50. Wisconsin	8,111,000	3,100,000	0	
51. Wyoming	0	0	0	
52. American Samoa				
53. Guam				
54. Puerto Rico				
55. Trust Territory				
56. Virgin Islands				

*Handicapped monies are separate from Comp Ed monies.

**Figures from Public School Program-Supt. of Documents 1975-76.

1977 Formula Children Count for Local Educational Agencies

Appendix C

	Total	Poor	AFDC	Delinquent	Correctional	Neglected	Foster
TOTALS	8,561,307	7,709,359	589,156	22,274	1,739	47,518	299,261
ALABAMA	275,480	272,146		127		689	2,527
ALASKA	13,915	12,393	871	45		203	403
ARIZONA	86,385	84,016		259		234	1,878
ARKANSAS	156,656	155,135		14		459	1,962
CALIFORNIA	701,541	595,765	72,810	9,036		3,396	27,534
COLORADO	76,568	71,254	1,822	148		421	2,923
CONNECTICUT	68,061	55,083	9,745	78		369	2,792
DELAWARE	18,855	17,372	492				991
FLORIDA	307,109	299,575	7	719		971	5,828
GEORGIA	297,729	293,871		42		1,239	2,568
HAWAII	26,054	19,465	6,136				443
IDAHO	25,094	23,716	662	40		52	624
ILLINOIS	381,432	302,311	68,897	554	13	2,035	7,652
INDIANA	132,336	123,494	2,352	557		1,316	4,597
IOWA	82,493	72,009	5,759	40		218	2,425
KANSAS	69,156	64,621	2,258	251		316	1,710
KENTUCKY	213,517	208,462	149	194		1,064	3,648
LOUISIANA	313,349	308,850	13	54		544	3,859
MAINE	37,691	35,318	1,352	35		155	1,751
MARYLAND	124,537	116,951	725	148	200	416	6,097
MASSACHUSETTS	144,018	116,909	21,255	215	33	857	4,763
MICHIGAN	314,245	220,483	80,692	1,876		952	10,312
MINNESOTA	112,759	98,935	8,951	726		432	3,726
MISSISSIPPI	263,639	261,479		24		554	3,433
MISSOURI	178,757	172,935	497	836	49	683	3,747
MONTANA	25,956	24,989				293	676
NEBRASKA	47,573	45,952	544	52		241	1,076
NEVADA	11,559	10,599	48	154		154	313
NEW HAMPSHIRE	16,159	14,285	732	37		165	972
NEW JERSEY	195,745	155,690	32,380	586		452	7,497
NEW MEXICO	81,759	80,559		6		395	789
NEW YORK	760,257	526,402	172,332	1,542	1,403	8,463	37,125
NORTH CAROLINA	319,167	312,545	30			1,890	4,792
NORTH DAKOTA	28,559	27,354	632	68		45	450
OHIO	290,799	273,562	5,213	632		2,721	8,491
OKLAHOMA	124,872	122,549	413	128		1,284	499
OREGON	65,561	53,953	7,802	461			3,363
PENNSYLVANIA	365,296	305,815	45,552	934		4,019	9,976
RHODE ISLAND	28,145	24,482	2,620	25		156	864
SOUTH CAROLINA	299,131	296,985		9		776	1,361
SOUTH DAKOTA	35,568	33,815	493	95		388	777
TENNESSEE	249,112	245,157		137		1,296	2,526
TEXAS	645,362	635,776		288		4,087	6,211
UTAH	34,250	30,798	2,121	134		67	1,133
VERMONT	15,296	13,062	1,444			159	631
VIRGINIA	223,932	214,357	320			669	8,586
WASHINGTON	96,514	80,172	11,127	657		936	3,622
WEST VIRGINIA	108,791	106,359	7	56	16	339	2,914
WISCONSIN	126,860	103,595	15,904	323		787	5,931
WYOMING	10,638	10,054		30		153	201
DISTRICT OF COLUMBIA	42,196	37,193	4,014				899
AMERICAN SAMOA							
GUAM							
PUERTO RICO							
TRUST TERRITORY							
VIRGIN ISLANDS							

E FORM [illegible]

STATOSTO STATISTICAL

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APPENDIX D

COMPENSATORY EDUCATION FUNDS: FEDERAL MONIES

	1974	1975	1976	1977
TOTALS	1,719,500,000	1,876,000,000	1,900,000,000	2,050,000,000
1. Alabama	38,101,787	42,655,460	43,831,536	46,856,194
2. Alaska	5,158,151	5,354,022	5,622,262	6,414,381
3. Arizona	11,432,687	16,753,134	16,824,077	20,785,846
4. Arkansas	24,298,742	26,492,824	27,183,459	29,388,487
5. California	140,274,925	155,136,489	154,142,773	171,556,617
6. Colorado	14,581,384	17,416,659	17,530,600	18,864,321
7. Connecticut	17,271,134	17,633,309	19,672,741	19,873,823
8. Delaware	3,721,680	5,455,829	5,686,912	5,989,339
9. District of Columbia	14,181,350	11,988,435	11,988,435	12,451,797
10. Florida	40,974,842	63,842,581	67,229,983	81,023,365
11. Georgia	44,699,611	46,937,049	48,060,346	51,701,581
12. Hawaii	4,751,550	5,349,677	5,873,732	5,960,644
13. Idaho	4,059,825	5,856,473	6,126,382	6,916,550
14. Illinois	87,775,305	95,555,470	91,454,909	101,549,806
15. Indiana	22,973,436	25,251,097	25,377,862	27,114,681
16. Iowa	16,658,419	16,211,978	16,376,563	16,595,598
17. Kansas	11,938,966	14,125,396	14,398,290	15,377,971
18. Kentucky	34,697,284	33,571,199	34,008,000	38,187,889
19. Louisiana	37,018,529	52,060,593	51,736,260	56,061,676
20. Maine	7,082,691	7,122,142	7,601,112	8,662,288
21. Maryland	27,043,173	31,153,223	31,659,701	34,183,719
22. Massachusetts	32,964,736	36,994,988	37,194,692	42,268,394
23. Michigan	73,845,675	80,358,696	85,884,229	90,041,976
24. Minnesota	25,659,442	29,384,988	29,244,217	31,899,426
25. Mississippi	39,763,894	41,051,606	42,544,658	46,115,961
26. Missouri	27,164,620	32,462,521	32,571,143	34,678,447
27. Montana	4,627,916	6,199,645	6,656,693	7,440,778
28. Nebraska	8,228,691	9,350,494	9,333,939	10,024,081
29. Nevada	1,547,647	2,457,300	2,525,292	2,827,541
30. New Hampshire	2,880,038	3,445,039	3,631,662	3,715,312
31. New Jersey	63,852,752	59,270,639	58,747,452	58,033,106
32. New Mexico	9,620,140	15,977,253	16,051,512	18,951,500
33. New York	247,563,367	216,221,313	200,246,891	204,068,799
34. North Carolina	59,007,242	54,096,377	54,927,150	59,582,110
35. North Dakota	5,515,417	5,704,539	5,717,078	5,954,059
36. Ohio	54,911,401	59,706,338	57,552,565	59,937,461
37. Oklahoma	19,504,095	21,087,184	21,362,408	22,643,692
38. Oregon	13,205,109	17,755,684	18,330,685	20,939,866
39. Pennsylvania	80,935,205	90,759,713	91,187,557	94,121,451
40. Rhode Island	5,891,099	6,826,385	7,185,825	7,328,661
41. South Carolina	34,129,109	34,130,376	34,730,566	36,992,607
42. South Dakota	6,182,094	6,338,901	6,157,374	6,409,994
43. Tennessee	14,880,289	39,388,545	40,319,507	41,132,809
44. Texas	97,510,084	123,562,744	125,573,876	147,992,810
45. Utah	5,634,606	6,345,851	6,424,831	6,993,369
46. Vermont	4,447,063	4,155,849	4,592,101	4,843,103
47. Virginia	35,677,248	39,272,349	41,465,674	44,464,610
48. Washington	20,172,510	25,511,739	25,972,188	27,271,157
49. West Virginia	19,197,951	17,681,155	17,805,315	18,946,931
50. Wisconsin	24,069,161	30,025,049	32,002,734	32,782,836
51. Wyoming	1,970,105	2,991,964	3,015,161	3,252,910
52. American Samoa	385,065	408,440	408,440	408,440
53. Guam	1,048,721	1,111,590	1,124,816	1,196,608
54. Puerto Rico	31,837,390	29,410,052	39,174,357	48,007,936
55. Trust Territory	1,177,995	1,244,150	1,244,150	1,244,150
56. Virgin Islands	649,764	688,377	688,733	672,470

APPENDIX E

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Office of Education
Elementary and Secondary Education Act of 1965, P.L. 89-10 As Amended
Title I, Assistance for Educationally Deprived Children
Allotments for Fiscal Year 1977

	PART A								PART B - $24,769,000		GRAND TOTAL	
	Local Educational Agencies	Handicapped Children	Juvenile Delinquents	Adult Correctional Institutions	Neglected Children	Migrant Children 1/	Administration	Total Part A	Special Incentive	Administration	Total Administration	Grand Total
TOTALS	1,721,130,372	111,413,431	18,854,624	7,831,615	1,932,882	130,909,332	21,185,611	2,013,500,217	24,523,761	245,239	21,430,850	2,050,000,000
ALABAMA	66,706,457	850,816	199,129	39,367		711,306	663,973	68,856,174			663,973	68,856,174
ALASKA	3,421,469	1,441,090	86,213				137,376	5,179,116	1,262,520	12,628	150,004	6,454,264
ARIZONA	15,716,931	392,937	299,156	35,226		3,744,569	199,027	20,176,779	677,360	6,773	205,800	20,860,912
ARKANSAS	25,664,318	1,355,472	199,382	90,115		1,982,950	290,973	29,384,487			290,973	29,384,487
CALIFORNIA	139,091,217	3,261,278	1,666,082	290,985		24,985,595	1,619,309	171,336,612			1,619,309	171,336,612
COLORADO	16,009,442	1,095,827	157,451	74,734		1,771,393	186,951	18,466,860	197,478	1,975	188,926	18,666,313
CONNECTICUT	16,358,837	1,771,324	103,615	418,828	42,303	1,232,329	196,771	19,873,923			196,771	19,873,923
DELAWARE	4,326,349	830,318	158,191			319,316	149,909	5,879,135	109,115	1,091	150,000	5,989,339
FLORIDA	59,626,676	2,678,095	621,167	507,167		16,917,299	812,212	81,023,365			812,212	81,023,365
GEORGIA	48,676,699	977,781	485,318	267,125		1,059,919	311,097	51,705,581			311,097	51,705,581
HAWAII	5,397,993	381,463	25,872	5,116			150,000	5,960,644			150,000	5,960,644
IDAHO	4,079,797	233,449	55,758	17,118		2,354,093	150,000	6,916,591			150,000	6,916,591
ILLINOIS	87,121,667	9,777,746	560,153	103,539	129,981	859,643	1,003,646	101,549,876			1,003,646	101,549,876
INDIANA	22,661,357	2,392,621	287,165	211,576	179,479	1,006,606	268,667	27,116,681			268,667	27,116,681
IOWA	15,250,265	756,184	131,915	103,998	93,126	106,605	166,313	16,595,598			166,313	16,595,598
KANSAS	13,234,019	1,307,690	157,567	83,299		846,676	152,257	15,777,971			152,257	15,777,971
KENTUCKY	36,713,791	958,636	176,678	77,032		1,933,666	378,098	38,187,859			378,098	39,187,909
LOUISIANA	52,287,725	2,187,190	637,472	27,192		507,856	344,178	54,967,071	1,089,768	10,887	355,065	56,067,676
MAINE	6,926,318	775,816	129,203	56,180		728,388	148,406	8,807,390	351,396	3,514	150,000	9,162,298
MARYLAND	29,463,482	2,103,631	301,177	232,267		852,419	333,368	33,670,151	508,451	5,085	338,453	34,183,719
MASSACHUSETTS	37,130,616	4,079,721	302,496	152,881		1,562,137	418,498	41,252,323	1,091,369	10,911	418,479	42,760,356
MICHIGAN	77,387,447	7,356,357	318,034	511,286	16,433	4,668,679	854,717	96,376,846	2,679,304	26,799	881,553	99,044,338
MINNESOTA	26,285,305	777,283	317,171	190,938		969,761	285,429	28,826,349	3,042,626	30,426	315,855	31,899,626
MISSISSIPPI	43,069,685	819,813	250,069	90,785		1,079,715	438,596	46,113,751			438,596	46,113,751
MISSOURI	34,687,207	2,136,901	330,713	106,974		1,093,186	363,331	38,828,442			363,331	38,828,442
MONTANA	5,256,680	377,368	98,955	7,062		877,667	163,095	6,763,422	690,451	6,905	170,000	7,460,778
NEBRASKA	9,100,166	745,167	88,450	78,576	22,341	286,431	150,000	10,524,231			150,000	10,524,231
NEVADA	2,049,657	361,274	105,121	20,999		93,490	150,000	2,827,541			150,000	2,827,541
NEW HAMPSHIRE	2,801,560	677,691	86,792				150,000	3,716,112			150,000	3,716,112
NEW JERSEY	67,770,659	5,677,050	739,831	56,310		2,279,346	557,292	76,796,428	1,737,313	17,373	574,665	78,551,106
NEW MEXICO	13,391,518	394,923	137,075	30,772		2,427,294	163,975	16,551,507	2,376,337	23,763	187,738	18,951,520
NEW YORK	183,573,303	11,771,585	1,771,636	770,013		3,021,614	1,993,698	200,331,143	3,678,566	36,786	2,030,484	204,046,495
NORTH CAROLINA	51,065,667	3,395,736	773,823	444,303		2,397,179	559,922	59,582,110			559,922	59,582,110
NORTH DAKOTA	4,664,058	294,526	58,812	23,156		763,309	150,000	5,954,059			150,000	5,954,059
OHIO	51,107,975	5,560,256	866,393	142,819	131,901	1,316,620	393,445	59,937,461			393,445	59,937,461
OKLAHOMA	20,301,200	697,233	171,877	204,686	253,469	791,076	276,195	22,663,692			276,195	22,663,692
OREGON	15,909,373	1,973,301	450,945	90,875		2,669,068	199,735	20,072,216	839,034	8,391	207,126	20,919,641
PENNSYLVANIA	83,201,186	7,320,917	760,365	339,078	266,036	823,098	928,901	93,819,031	299,620	2,996	931,897	94,121,647
RHODE ISLAND	6,530,719	565,076	26,048	23,716	33,044		150,000	7,328,661			150,000	7,328,661
SOUTH CAROLINA	33,696,867	1,314,338	301,472	326,345	88,450	644,138	366,263	36,992,607			366,263	36,992,607
SOUTH DAKOTA	5,983,471	383,337	31,966	33,817		37,309	150,000	6,609,996			150,000	6,609,996
TENNESSEE	40,330,671	900,003	486,143	239,672	239,956	372,311	427,059	43,132,819			427,059	43,132,819
TEXAS	104,926,030	6,372,317	969,462	267,157	216,724	31,683,413	1,463,277	147,992,810			1,463,775	147,992,810
UTAH	5,368,601	402,126	176,324	7,873		283,961	143,042	6,472,663	475,368	4,958	150,000	6,952,989
VERMONT	3,933,648	1,021,399	53,452	20,090		28,380	144,737	5,313,057	526,248	5,263	150,000	5,843,303
VIRGINIA	38,979,387	2,310,117	549,856	398,157		778,917	447,244	44,464,619			447,244	44,464,619
WASHINGTON	24,049,840	1,447,591	167,179	162,713		4,414,191	286,627	28,777,297	538,601	5,385	292,012	29,321,283
WEST VIRGINIA	17,696,816	544,275	234,696	63,011	23,670	209,017	187,593	18,944,921			187,593	18,944,921
WISCONSIN	37,246,328	2,905,761	637,681	95,939		736,030	313,179	41,621,274	1,164,360	11,644	324,823	42,797,278
WYOMING	2,207,365	173,538	47,257	11,852		230,928	142,233	2,813,673	214,672	2,767	150,000	3,031,112
DISTRICT OF COLUMBIA	10,368,060	1,599,610	285,815		148,672		150,000	12,551,797			150,000	12,551,797
AMERICAN SAMOA	383,440						25,000	408,440			25,000	408,440
GUAM	1,015,634	155,974					25,000	1,196,608			25,000	1,196,608
PUERTO RICO	46,611,947	252,979	133,751	63,151		193,771	675,326	48,007,936			675,326	48,007,936
TRUST TERRITORY	1,219,170						25,000	1,244,170			25,000	1,244,170
VIRGIN ISLANDS	622,434						25,000	[illegible]			25,000	[illegible]
Dept. of Interior	[illegible]											
Evaluation & Studies	(17,567,233)							17,567,233				17,567,233
Undistributed												11,500,000 230,783

672,470

672,470

1/ $2.3 million of this amount is reserved for the Migrant Student Record Transfer System

APPENDIX F

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Office of Education
Elementary and Secondary Education Act of 1965, P.L. 89-10 As Amended
Title I, Assistance for Educationally Deprived Children
Allotments for Fiscal Year 1976

	PART A								PART B - $16,538,000		GRAND TOTAL	
	Local Educational Agencies	Handicapped Children	Juvenile Delinquents	Adult Correctional Institutions	Neglected Children	Migrant Children 1/	Administration	Total Part A	Special Incentive	Administration	Total Administration	Grand Total
TOTALS	1,625,412,679	93,868,643	10,090,832	7,294,243	2,084,369	97,090,478	19,792,971	1,855,634,215	16,374,257	163,743	19,956,714	1,900,000,000
ALABAMA	61,816,255	633,507	193,129	39,363		711,306	633,976	63,631,536			633,976	63,631,536
ALASKA	3,369,573	1,491,880	61,348	6,608	25,383		144,606	5,022,480	539,408	5,354	151,200	5,622,262
ARIZONA	13,679,036	530,238	299,156	13,693		2,136,382	166,575	16,824,077			166,575	16,824,077
ARKANSAS	23,900,022	1,201,718	379,392	139,157		1,347,730	269,163	27,183,459			269,163	27,183,459
CALIFORNIA	130,039,420	2,076,029	1,469,082	263,340		18,539,540	1,526,166	154,142,773			1,526,166	154,142,773
COLORADO	13,772,261	1,538,468	137,451	19,303		1,573,566	171,116	17,181,563	345,601	3,456	173,570	17,530,600
CONNECTICUT	16,195,042	1,320,891	105,496	482,364	42,780	961,525	197,766	19,489,392	231,336	2,313	194,229	19,677,741
DELAWARE	4,110,193	843,255	158,136			313,716	148,499	5,575,642	110,128	1,101	150,000	5,686,917
FLORIDA	50,503,034	7,097,705	621,467	542,567		17,759,567	665,643	67,229,953			665,643	67,229,953
GEORGIA	65,357,903	701,233	485,318	215,109		245,047	675,845	68,560,346			675,845	68,560,346
HAWAII	5,392,107	302,785	23,624	5,116			150,000	5,873,732			150,000	5,873,732
IDAHO	3,461,995	222,260	39,710	25,553		1,924,835	150,000	6,176,382			150,000	6,176,382
ILLINOIS	82,559,717	6,473,167	560,153	103,530	120,981	224,962	915,494	91,634,909			915,494	91,634,909
INDIANA	21,565,768	2,135,308	282,685	233,526	179,679	729,830	251,266	25,377,962			251,266	25,377,962
IOWA	15,060,203	756,186	131,305	32,523	81,128	101,036	162,144	16,376,563			162,144	16,376,563
KANSAS	12,269,306	1,107,450	139,853	95,202		646,674	150,000	[illegible]			150,000	14,389,290
KENTUCKY	32,426,366	894,807	125,863	75,629	31,393	116,989	336,713	34,008,000			336,713	34,008,000
LOUISIANA	47,732,141	2,161,190	639,472	23,902		688,560	508,652	51,353,617	375,854	3,798	512,261	51,736,260
MAINE	6,085,298	608,416	179,202	26,849		299,969	147,234	7,356,384	246,382	2,966	150,000	7,606,112
MARYLAND	27,832,675	1,583,822	305,379	231,962		950,610	311,139	31,623,[illegible]	232,292	2,323	313,462	31,858,701
MASSACHUSETTS	30,306,592	4,323,563	318,425	117,326		1,168,340	366,921	36,857,025	334,376	3,343	368,264	37,196,692
MICHIGAN	70,850,778	6,462,928	299,381	474,449	16,028	6,675,082	325,778	83,603,528	2,450,139	24,501	850,339	85,856,229
MINNESOTA	24,665,701	1,157,036	319,131	190,939		519,636	268,325	27,100,905	2,122,190	21,222	289,547	29,244,217
MISSISSIPPI	60,030,527	587,920	250,069	56,391		1,299,617	421,236	62,566,658			421,236	62,566,659
MISSOURI	29,117,891	1,922,592	310,733	106,976		790,666	322,487	32,571,163			322,487	32,571,163
MONTANA	4,828,797	252,811	87,987	1,158	50,672	872,442	146,870	6,240,562	313,001	3,130	150,000	6,656,693
NEBRASKA	8,635,710	334,916	88,450	19,326	16,238	280,631	150,000	9,333,938			150,000	9,333,938
NEVADA	2,097,856	257,566	105,121	15,951		38,900	150,000	2,525,292			150,000	2,525,292
NEW HAMPSHIRE	2,822,661	558,638	86,282			24,081	150,000	3,631,662			150,000	3,631,662
NEW JERSEY	49,173,844	4,240,298	739,831	56,300		2,279,366	564,876	57,052,693	1,678,175	16,782	581,658	58,747,452
NEW MEXICO	12,447,191	302,050	137,025	5,696		2,427,294	153,991	15,353,087	693,490	4,935	158,926	16,051,512
NEW YORK	180,130,212	10,016,256	1,902,367	774,315		2,932,220	1,959,081	197,[illegible]	2,456,138	24,561	1,983,642	[illegible]
NORTH CAROLINA	48,615,109	2,746,278	273,821	109,499		1,880,609	563,833	54,[illegible]			563,833	54,[illegible]
NORTH DAKOTA	4,427,877	296,526	58,812	21,154		762,709	150,000	5,717,078			150,000	5,717,078
OHIO	49,190,897	5,154,655	886,300	194,195	131,981	1,516,620	569,427	57,552,565			569,427	57,552,565
OKLAHOMA	19,069,470	697,233	154,672	204,656	251,458	773,300	211,309	21,362,408			211,309	21,362,408
OREGON	13,368,764	1,642,303	361,737	77,626	34,277	1,976,916	174,396	17,636,017	709,372	7,096	181,492	18,352,685
PENNSYLVANIA	81,650,848	6,662,849	760,305	139,908	264,036	831,411	898,281	90,717,299	465,602	4,656	902,967	91,187,557
RHODE ISLAND	6,629,923	332,001	23,505	11,432	33,066	3,100	150,000	7,183,025			150,000	7,183,025
SOUTH CAROLINA	31,760,652	1,216,227	301,672	175,363	88,650	564,158	343,967	34,730,566			343,967	34,730,566
SOUTH DAKOTA	5,557,851	361,530	51,966	12,617		37,510	150,000	6,157,374			150,000	6,157,374
TENNESSEE	37,962,866	876,018	659,385	159,792	239,956	322,311	399,203	40,319,507			399,203	40,319,507
TEXAS	97,859,648	5,336,951	396,669	225,260	316,726	19,635,857	1,243,306	125,573,976			1,243,306	125,573,976
UTAH	5,235,093	600,120	106,376	7,623		263,901	147,392	6,161,603	260,[illegible]	2,608	150,000	6,424,931
VERMONT	2,977,360	899,381	63,443	6,866		23,999	146,747	4,061,596	525,252	5,252	150,000	4,592,101
VIRGINIA	37,096,971	2,261,293	549,690	393,257		778,937	410,551	41,465,676			410,551	41,465,676
WASHINGTON	19,363,470	1,616,802	367,179	162,713		3,730,390	250,206	25,220,760	696,475	6,965	257,151	25,922,188
WEST VIRGINIA	16,377,023	546,215	238,691	32,699	23,670	209,317	176,290	17,603,315			176,290	17,603,315
WISCONSIN	25,993,621	2,976,967	432,661	27,836	63,729	236,035	301,547	30,458,301	1,529,160	15,292	316,839	32,002,756
WYOMING	2,032,560	256,247	69,951	11,952		289,929	147,663	2,[illegible]	233,737	2,337	150,000	3,013,101
DISTRICT OF COLUMBIA	10,601,692	1,399,903	262,766		104,127		150,000	12,518,368			150,000	12,518,368
AMERICAN SAMOA	383,440						25,000	408,440			25,000	408,440
GUAM	1,015,696	86,122					25,000	1,126,818			25,000	1,126,818
PUERTO RICO	36,477,090	571,653	462,714	211,354		658,666	397,865	39,176,357			397,865	39,176,357
TRUST TERRITORY	1,219,130						25,000	1,244,130			25,000	1,244,130
VIRGIN ISLANDS	457,470		35,907				25,000	518,377			25,000	518,377
[illegible] of Interior	17,367,233							17,367,233				17,367,233
Evaluation & Studies												17,500,000
Undistributed												337,796

1/ $1.7 million of this amount reserved for the Migrant Student Record Transfer system

PR II B

APPENDIX C

PR II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education
Elementary and Secondary Education Act of 1965, P.L. 89-10, As Amended
Title I, Assistance for Educationally Deprived Children
Allotments for Fiscal Year 1975

	PART A								PART B - $11,0[illegible]		PART C - $38,000,000			
	Local Educational Agencies	Handicapped Children	Juvenile Delinquents	Adult Correctional Institutions	Neglected Children	Migrant Children 1/	Administration	Total Part A	Special Incentive	Administration	Special Grants	Administration	Total Administration	Grand Total
TOTALS	1,587,160,967	87,863,520	18,062,601	6,736,295	2,023,753	91,953,160	19,311,607	1,813,110,083	11,061,386	138,616	37,673,761	376,239	19,826,560	1,8[illegible] 1,865,118,983
ALABAMA	40,339,730	633,507	199,126	39,363		711,306	615,730	42,362,274			319,986	3,200	677,430	42,665,460
ALASKA	3,725,765	1,064,314	56,997	6,608			143,777	4,977,457	106,716	3,407	81,626	816	151,000	5,166,022
ARIZONA	13,865,267	530,230	299,136	11,577		2,159,285	161,265	16,991,799			258,758	2,587	165,877	16,753,136
ARKANSAS	22,960,111	1,267,718	199,592	50,775		1,538,815	260,121	26,742,337			208,608	2,036	267,9[illegible]	26,492,[illegible]
CALIFORNIA	128,062,203	2,026,617	1,468,092	193,621		12,363,908	1,490,056	150,576,609			4,515,151	45,145	1,536,[illegible]	155,136,468
COLORADO	13,904,167	1,530,948	157,451	17,460		1,323,300	167,619	16,999,775	71,000	771	425,240	4,253	172,643	17,418,839
CONNECTICUT	11,831,736	1,316,923	189,494	427,066	49,000	776,617	196,569	16,473,513	51,653	537	250,123	2,501	174,387	17,[illegible]
DELAWARE	3,985,756	327,986	154,138			315,716	146,913	5,345,999	175,761	1,087			150,000	5,455,879
FLORIDA	67,888,876	2,057,672	871,087	542,567		11,167,562	625,936	82,914,510			916,496	9,169	632,105	83,862,361
GEORGIA	64,016,935	281,233	485,318	187,665		503,391	400,360	66,697,190			485,909	4,859	405,218	66,977,368
HAWAII	4,662,640	261,995	23,626	619	20,630		147,994	5,167,501			200,572	2,006	150,000	5,368,[illegible]
IDAHO	3,603,352	193,559	50,759	25,007		1,670,527	149,350	5,790,794			63,039	630	150,000	5,856,673
ILLINOIS	86,063,765	5,679,366	564,153	101,530	129,991	725,387	910,577	93,998,239			3,551,694	35,517	946,094	97,555,[illegible]
INDIANA	23,072,822	2,144,579	262,485	191,716	179,676	229,430	246,011	26,047,114			399,991	4,000	250,011	26,451,[illegible]
IOWA	14,861,226	756,146	131,385	47,990	83,120	171,026	157,099	15,918,716	35,606	356	255,152	2,552	160,[illegible]	16,211,[illegible]
KANSAS	11,767,723	1,102,637	139,953	55,720		666,674	147,665	13,869,391			253,570	2,535	150,000	14,125,[illegible]
KENTUCKY	31,930,341	712,696	178,755	75,624		60,913	334,561	33,293,894			292,678	2,927	337,388	33,5[illegible]
LOUISIANA	47,165,469	2,131,161	418,412	30,430		699,500	502,255	50,727,713	752,989	7,525	367,212	3,672	515,452	52,000,[illegible]
MAINE	5,727,307	337,527	129,302	25,328	33,116	242,522	147,004	6,470,110	237,569	2,376	41,652	415	150,000	6,[illegible]
MARYLAND	26,786,991	1,361,101	303,279	211,967		930,119	299,357	30,134,276	336,165	3,367	452,314	4,523	308,667	31,[illegible]
MASSACHUSETTS	30,292,700	1,627,027	272,919	76,930		620,325	348,843	33,233,127	219,660	2,186	1,524,377	15,290	384,287	35,[illegible]
MICHIGAN	63,865,003	5,795,116	284,816	676,649	16,253	4,475,087	749,020	75,651,967	2,020,200	20,782	2,551,066	25,510	795,630	80,358,[illegible]
MINNESOTA	25,155,464	678,248	318,131	195,938		456,149	1,267,900	27,065,855	1,230,336	12,382	550,694	5,507	290,961	29,[illegible]
MISSISSIPPI	38,341,465	665,173	258,000	63,367		1,090,363	403,717	40,776,666			272,438	2,726	406,451	41,051,[illegible]
MISSOURI	29,643,346	1,069,958	310,733	500,976		632,838	315,609	31,904,779			552,230	5,522	321,411	32,462,521
MONTANA	4,500,075	326,676	67,997	1,159	50,677	822,163	167,000	5,909,565	162,900	1,623	69,651	697	150,000	6,139,[illegible]
NEBRASKA	8,337,582	336,916	98,190		16,718	209,431	148,659	9,215,027			136,126	1,361	150,000	9,[illegible]
NEVADA	1,951,065	142,107	105,122	16,809		54,000	148,667	2,403,679			55,200	553	150,000	2,[illegible]
NEW HAMPSHIRE	2,761,951	377,767	66,782			26,081	149,350	3,379,620			64,963	650	150,000	3,445,[illegible]
NEW JERSEY	47,879,765	4,240,298	730,871	52,380		2,270,366	549,069	55,730,609	1,092,633	10,926	2,604,620	26,066	586,037	59,[illegible]
NEW MEXICO	12,028,752	382,950	132,075			2,427,294	149,752	15,174,920	691,951	6,920	353,935	1,519	150,191	15,[illegible]
NEW YORK	297,864,751	20,066,166	1,983,367	776,915		2,932,120	2,926,964	327,561,313	3,079,298	30,792	4,516,851	45,168	2,160,905	336,[illegible]
NORTH CAROLINA	47,964,963	2,218,036	273,923	375,566		1,397,099	530,186	52,568,953			512,301	5,123	535,309	53,0[illegible]
NORTH DAKOTA	4,377,307	266,536	54,017	25,256		762,369	149,620	5,600,131			38,023	380	150,000	5,[illegible]
OHIO	50,925,152	3,114,655	377,416	156,195	171,910	1,328,520	572,[illegible]	56,345,686			1,752,[illegible]	18,672	591,157	58,[illegible]
OKLAHOMA	18,596,358	605,081	134,672	294,606	251,658	1,773,300	209,520	20,857,675			172,635	2,226	208,786	21,[illegible]
OREGON	13,065,370	1,392,165	176,714	77,426		1,965,761	169,369	17,075,473	100,095	1,491	133,893	1,339	175,799	17,[illegible]
PENNSYLVANIA	78,321,319	5,055,350	702,365	218,587	214,036	831,121	961,755	87,037,223	1,359,037	13,590	2,126,987	21,264	968,611	90,[illegible]
RHODE ISLAND	5,852,190	511,456	37,152	13,632	37,064	3,500	147,380	6,541,981			261,846	2,620	150,000	6,[illegible]
SOUTH CAROLINA	30,782,929	1,214,223	321,672	376,365	56,430	666,117	335,987	33,843,761			281,773	2,838	337,825	34,[illegible]
SOUTH DAKOTA	5,677,423	133,675	51,366	19,566		37,520	149,221	6,260,213			77,909	779	150,000	6,338,901
TENNESSEE	36,392,346	678,119	456,343	131,320	234,436	322,311	386,269	39,013,037			371,795	3,718	389,986	38,388,565
TEXAS	95,387,537	3,534,551	778,628	217,081	316,756	19,635,997	1,208,565	122,067,277			1,480,858	14,809	1,223,374	123,562,[illegible]
UTAH	5,900,965	635,130	156,672	7,673		283,064	146,730	6,315,639	171,381	1,716	155,357	1,554	150,000	6,[illegible]
VERMONT	2,763,655	361,763	63,563	4,169		30,316	146,081	3,760,070	366,676	1,667	25,136	252	150,000	4,155,[illegible]
VIRGINIA	35,396,213	1,224,396	549,638	950,257		226,613	382,995	38,692,353			536,352	5,464	388,836	39,272,369
WASHINGTON	13,760,632	1,629,683	367,176	142,713		1,415,490	241,709	24,611,696	620,751	6,203	659,910	6,599	252,392	25,913,[illegible]
WEST VIRGINIA	16,368,521	630,961	236,691	30,501	25,677	306,317	173,229	17,498,096			143,277	1,432	175,061	17,[illegible]
WISCONSIN	25,927,752	2,155,156	432,661	71,460	13,[illegible]	236,[illegible]	290,873	28,368,341	1,166,005	11,660	496,669	4,966	307,177	30,[illegible]
WYOMING	2,020,[illegible]	272,033	76,957	17,363		255,[illegible]	147,777	2,761,970	127,625	1,276	30,250	302	150,[illegible]	2,[illegible]
DISTRICT OF COLUMBIA	8,670,[illegible]	1,367,276	267,746		236,327		142,000	11,247,000			736,015	7,360	150,000	11,[illegible]
AMERICAN SAMOA	[illegible]						25,000	408,[illegible]					25,000	[illegible]
GUAM	1,015,006	[illegible]					25,000	1,111,[illegible]					25,000	[illegible]
PUERTO RICO	27,2[illegible]	323,433	363,715	227,168		526,807	293,189	29,410,[illegible]					293,189	[illegible]
TRUST TERRITORY	1,[illegible]						25,000	1,244,[illegible]					25,000	1,26[illegible]
VIRGIN ISLANDS	[illegible]		[illegible]				25,000	[illegible]					25,000	[illegible]
Dept. of Interior	17,3[illegible]					200,000		17,3[illegible] 300,000						17,3[illegible] 9,950,000 1,931,917

[illegible]
Evaluation and Studies
1/ [illegible]

APPENDIX H

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education
Elementary and Secondary Education Act of 1965, P.L. 89-10, as Amended
Title I, Assistance for Educationally Deprived Children
Allotments for Fiscal Year 1976

	PART A								PART B	PART C			GRAND TOTAL	
	Local Educational Agencies	Handicapped Children (State Agencies)	Juvenile Delinquents in Institutions (State Agencies)	Delinquents in Correctional Institutions (State Agencies)	Neglected Children in Institutions (State Agencies)	1/ Migratory Children (State Agency)	State Administration	PART A TOTAL	PART B Special Incentive Grants	Local Educational Agencies	Administration	PART C Total	ADMINISTRATION	TOTAL
GRAND TOTAL	1,446,133,508	85,777,779	17,331,033	[illegible]	1,001,246	78,331,437	18,048,016	1,653,738,769	$17,855,113	$47,139,737	$448,588	$47,588,325	$18,496,604	$1,719,300,000
50 States & D.C.	1,398,397,696	83,135,630	17,002,415	5,685,431	1,001,246	78,331,437	17,632,796	1,601,971,636	17,855,113	47,139,737	448,588	47,588,325	18,081,382	1,667,514,576
ALABAMA	36,549,166	833,507	199,129	39,361		711,306	381,325	38,493,794		1,592,071	15,920	1,607,991	397,245	40,101,787
ALASKA	2,640,076	1,486,916	66,887	-		-	150,000	4,399,585	483,316	53,132		55,257	150,000	5,138,151
ARIZONA	9,121,631	530,238	298,156	11,577		2,126,781	150,000	11,316,883		115,788		115,788	150,000	11,432,687
ARKANSAS	20,963,618	1,201,718	190,597	39,367		714,595	231,557	23,387,445		868,276	3,221	871,497	234,781	24,258,762
CALIFORNIA	121,348,148	3,026,019	1,448,287	177,827		10,076,838	1,350,749	138,427,483	165,932	1,645,812	36,498	1,682,310	1,387,247	140,275,925
COLORADO	10,833,518	1,138,848	137,451	-		1,521,566	150,000	14,303,375	66,160	233,849		233,849	150,000	14,581,386
CONNECTICUT	14,397,317	1,316,873	105,696	-	69,080	726,412	164,957	16,440,433	313,285	296,284	2,962	297,206	167,899	17,271,136
DELAWARE	2,383,748	676,357	158,130	-		315,318	150,000	3,673,653	66,638	33,793		33,793	150,000	3,721,689
FLORIDA	35,297,867	2,957,873	621,647	187,567		11,167,302	397,276	43,099,378		863,783	8,408	872,191	405,684	40,976,862
GEORGIA	40,573,812	781,233	685,718	193,065		537,847	425,707	42,938,382		1,686,306	15,963	1,703,269	447,370	44,899,611
HAWAII	4,106,538	231,380	13,606	-	30,000	-	150,000	4,532,106		199,444		199,444	150,000	4,731,550
IDAHO	2,719,230	196,152	58,796	75,307		809,309	150,000	4,059,873		-		-	150,000	4,059,873
ILLINOIS	77,966,803	5,679,808	568,153	-	120,901	726,867	842,583	85,100,772		2,658,033	26,480	2,674,513	869,063	87,775,305
INDIANA	18,773,430	2,146,990	202,685	151,719	179,676	729,830	223,017	22,536,739	125,798	319,909	3,199	323,108	226,216	22,873,663
IOWA	14,601,961	750,184	131,305	-	83,179	301,076	158,736	15,870,088	724,284	103,017	1,030	104,047	152,784	16,638,413
KANSAS	9,631,073	1,108,617	139,853	85,309		646,674	150,000	11,738,176		187,840		187,840	150,000	11,938,996
KENTUCKY	31,312,786	715,696	-	87,581		88,913	320,760	32,608,768		1,222,238	12,727	1,190,536	333,337	34,122,286
LOUISIANA	33,322,489	3,131,163	639,672	70,839		488,560	346,025	36,790,526	1,000,433	1,258,980	12,590	1,271,570	358,615	37,018,529
MAINE	5,661,369	555,333	179,302	17,503		66,833	150,000	6,566,253	447,714	90,734		90,734	150,000	7,082,481
MARYLAND	22,681,512	1,360,787	321,186	231,987	11,116	950,419	236,641	25,907,529	325,682	806,893	8,069	814,962	244,530	27,047,173
MASSACHUSETTS	28,106,306	3,298,862	152,282	76,970		293,850	318,230	33,366,298		713,303	7,134	720,437	325,364	33,986,735
MICHIGAN	54,817,883	6,873,608	296,816	674,649	16,863	4,329,766	688,897	65,598,572	2,678,267	1,563,104	13,631	1,576,735	704,528	73,863,676
MINNESOTA	20,881,155	678,889	319,131	190,938		430,570	225,361	22,701,666	2,368,017	546,323	5,463	551,786	230,826	25,639,469
MISSISSIPPI	35,922,628	696,580	250,389	67,067		1,060,543	377,509	38,129,616		1,619,283	16,193	1,635,476	393,702	39,765,092
MISSOURI	33,367,302	1,069,950	310,733	136,876		666,242	261,199	36,381,108		773,736	7,738	781,474	268,937	37,162,582
MONTANA	3,863,362	336,630	87,987	-	30,677	872,662	150,000	5,351,098	236,837	19,895		19,895	150,000	5,627,916
NEBRASKA	7,187,530	334,816	88,650	-	14,298	289,631	150,000	8,066,633		162,258		162,258	150,000	8,228,891
NEVADA	1,168,678	130,120	103,131	16,819		38,900	150,000	1,567,667		-		-	150,000	1,517,667
NEW HAMPSHIRE	2,375,895	367,780	86,282	-		24,981	150,000	2,890,038		-		-	150,000	2,890,038
NEW JERSEY	52,903,906	4,260,298	778,831	54,500		1,279,366	602,177	60,819,958	1,277,454	1,738,060	17,380	1,755,440	619,557	63,852,757
NEW MEXICO	7,393,185	382,056	137,075	-		1,016,966	150,000	9,079,236	199,317	341,367		341,367	150,000	9,620,140
NEW YORK	218,026,638	8,988,871	1,771,573	778,513		2,932,320	2,315,079	235,837,367	2,678,267	8,957,577	89,576	9,047,153	2,404,655	247,563,387
NORTH CAROLINA	51,556,665	2,139,016	223,833	373,566		1,363,796	563,929	56,934,769		2,037,152	20,321	2,052,473	584,250	59,007,242
NORTH DAKOTA	4,101,267	764,326	58,812	23,126		762,709	150,000	5,390,440		126,969		126,969	150,000	5,515,617
OHIO	65,280,613	3,156,555	835,616	104,195	131,981	1,518,920	530,233	53,553,511		1,324,424	13,466	1,337,890	543,677	[illegible]
OKLAHOMA	16,669,766	658,977	136,872	208,586	251,658	223,360	188,336	18,878,323		618,586	6,186	624,772	183,110	19,506,065
OREGON	8,709,633	1,316,695	240,633	77,524		1,945,762	150,000	12,440,167	652,371	112,581		112,581	150,000	13,205,109
PENNSYLVANIA	68,665,082	5,779,688	262,365	206,587	266,036	631,611	723,457	76,037,827	670,062	2,266,892	22,669	2,287,561	793,101	80,045,293
RHODE ISLAND	5,012,775	515,656	71,181	13,612	31,066	3,100	150,000	5,756,390		176,753		176,753	150,000	5,933,059
SOUTH CAROLINA	29,853,231	1,214,372	301,672	178,345	88,650	666,130	326,799	32,606,677		1,311,319	13,113	1,324,432	337,912	34,129,109
SOUTH DAKOTA	5,670,551	333,625	31,066	6,431	-	37,510	150,000	6,067,983	101,179	32,932		32,932	150,000	6,182,094
TENNESSEE	31,273,192	878,019	659,305	65,759	238,956	322,311	337,376	33,569,995		1,297,321	12,973	1,310,294	345,349	34,880,289
TEXAS	67,575,756	5,536,651	966,669	207,301	316,756	19,615,087	961,367	95,078,083		2,407,922	24,079	2,432,001	985,446	97,510,084
UTAH	4,462,187	600,110	106,976	7,873		263,961	150,000	5,391,105	198,953	64,548		64,548	150,000	5,654,606
VERMONT	2,093,957	733,535	63,687	6,158		5,681	150,000	3,051,580	306,412	29,070		29,070	150,000	3,447,068
VIRGINIA	33,327,692	1,055,865	569,480	390,257		778,917	363,056	36,469,653		1,018,609	10,186	1,028,795	373,242	35,677,548
WASHINGTON	15,136,927	1,368,534	367,179	90,765		2,095,331	190,667	19,255,363	259,368	267,888	2,679	270,567	[illegible]	[illegible]
WEST VIRGINIA	17,319,873	670,913	218,481	30,101	75,670	309,317	182,962	19,477,097	63,907	618,161	6,182	624,343	[illegible]	[illegible]
WISCONSIN	18,709,636	3,135,508	632,681	73,568	63,729	529,856	213,443	23,156,565	1,313,389	367,739	3,678	371,417	217,121	24,841,371
WYOMING	1,185,584	223,033	63,997	-		197,811	150,000	1,804,185	163,817	-		-	150,000	1,970,3[illegible]
DISTRICT OF COLUMBIA	11,196,811	946,276	263,766	-	81,838	-	150,000	12,637,641		543,709		543,709	150,000	13,181,3[illegible]
BIA	16,588,398							16,588,398						16,588,398
AMERICAN SAMOA	380,065						25,000	385,065					25,000	385,065
GUAM	952,825	70,896					25,000	1,048,721					25,000	1,048,721
PUERTO RICO	30,794,432	371,653	662,776	211,159			315,227	31,837,290					315,227	31,837,290
TRUST TERRITORY	1,152,995						25,000	1,177,995					25,000	1,177,995
VIRGIN ISLANDS	608,837		15,907				25,000	649,744					25,000	649,744
National Advisory Council on Education of Disadvantaged Children														185,000
Undistributed														13,293

1/ $1,900,000 of this amount reserved for the Migrant Student Record Transfer System

PERCENT OF REVENUE RECEIPTS BY SOURCE – NEA
(for Education)

1975-76	Federal	State	Local & Other
TOTALS			
1. Alabama	16.1	63.6	20.3
2. Alaska	15.9	66.0	18.1
3. Arizona	10.3	45.7	44.0
4. Arkansas	16.1	51.4	32.5
5. California	11.1	35.3	53.7
6. Colorado	6.8	39.8	53.4
7. Connecticut	4.7	31.0	64.3
8. Delaware	9.3	68.6	22.1
9. District of Columbia	17.8		82.2
10. Florida	10.8	51.9	37.3
11. Georgia	11.9	58.2	29.9
12. Hawaii	10.4	85.1	4.5
13. Idaho	10.3	49.0	40.7
14. Illinois	6.5	48.4	45.2
15. Indiana	6.1	39.2	54.7
16. Iowa	4.1	40.3	55.7
17. Kansas	8.2	43.2	48.6
18. Kentucky	13.2	56.6	30.3
19. Louisiana	17.5	55.7	26.8
20. Maine	8.1	45.5	46.5
21. Maryland	7.3	42.7	50.0
22. Massachusetts	4.1	23.5	72.4
23. Michigan	7.7	36.2	56.1
24. Minnesota	5.5	54.7	39.7
25. Mississippi	21.5	54.4	24.0
26. Missouri	8.1	35.3	56.6
27. Montana	6.1	57.6	36.3
28. Nebraska	8.8	22.7	68.5
29. Nevada	5.5	38.8	55.8
30. New Hampshire	6.0	9.4	84.6
31. New Jersey	4.4	29.2	66.4
32. New Mexico	22.9	59.6	17.5
33. New York	4.8	39.6	55.6
34. North Carolina	13.7	65.6	20.7
35. North Dakota	9.3	45.3	45.3
36. Ohio	6.5	39.7	53.8
37. Oklahoma	11.7	51.1	37.2
38. Oregon	5.6	27.1	67.3
39. Pennsylvania	9.1	47.0	43.9
40. Rhode Island	7.9	35.9	56.2
41. South Carolina	15.2	55.6	29.2
42. South Dakota	13.4	13.2	73.3
43. Tennessee	12.7	48.3	39.0
44. Texas	10.6	50.1	39.3
45. Utah	8.0	51.5	38.6
46. Vermont	7.0	28.2	64.8
47. Virginia	10.5	30.5	59.0
48. Washington	7.4	65.2	27.4
49. West Virginia	12.1	56.5	31.4
50. Wisconsin	4.4	35.5	60.1
51. Wyoming	6.5	31.6	61.9
52. American Samoa			
53. Guam			
54. Puerto Rico			
55. Trust Territory			
56. Virgin Islands			

STATEMENT OF OWEN F. PEAGLER, CHAIRMAN, NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Dr. **Peagler**. Thank you, Mr. Chairman.

I am Dean Owen Peagler, Chairman of the National Advisory Council on the Education of Disadvantaged Children, a statutory advisory council charged with the review of Title I, ESEA and other compensatory education programs.

I have with me a written statement which details the major concerns of the council and makes recommendations to improve the act. I would like to request that it be made part of the record.

Thank you for the privilege of discussing the accomplishments of a work of Congress which faces the nation today. Public outcry has been raised against the effectiveness of the educational system in general.

Citing test score declines, dropout rates, youth unemployment, crime statistics, and graduates who cannot read, or who do not possess job entry skills, there are many who do not see our schools as a site where real learning takes place.

Title I has provided the encouraging sign we are all seeking, that educational goals can be met with success, achieved in areas where once it was least expected, in areas with high concentrations of low income families.

Thanks to your leadership, Title I is making a difference in the education of poor children, and through better management and planning to the education of all children.

I appreciate being asked to testify on the administration of Title I, focusing on such issues as Federal and state monitoring and enforcement, regulations, comparability, supplement—not supplant—provisions and maintenance of effort.

It is here where the greatest impact on improving Title I can be made. The Council favors placing the emphasis on serving educationally disadvantaged children who live in areas of high concentrations of low income families.

As it is, this committee, which identified the eligible group of children, you know best of all that funding levels have never been sufficient to serve the statutorily defined eligible children.

The Council recommends that full funding of Title I be accomplished for the next possible fiscal year, and that added monies be spent on serving the unserved 30 percent of eligible elementary and secondary students, and nonpublic school students, and preschool children in target attendance areas.

It would be desirable in our time to serve all of the educationally disadvantaged children in the country, but we have yet to fully serve those who are living in areas of high concentrations of low income families.

Federal monitoring and enforcement is at an all-time high. Appropriations have been curtailed for salaries and expenses of the U.S. Office of Education, and this has reduced the ability of the agency to monitor and review programs by more than 50 percent. As a result, less than 50 percent of the states are visited by USOE each year.

The rural education report of my Council released last month points out the problems encountered by rural families in attempting to obtain special health services. Many cases of educational disadvantagement among the children of these regions can be directly traced to hearing, speech, or other physical disabilities which have impaired the child's ability to learn.

The Council believes that educational disadvantagement can be significantly reduced for such children through preventative and maintenance health services.

The Council visited many preschool and early grade Title I programs throughout the southern part of the country and Appalachia, and noted from discussions with program administrators and teachers that health maintenance services are the most necessary, most expensive, and the most difficult to obtain.

They must not only treat the child's disabilities, but must work with the parents as well to reduce the likelihood of further developmental disorders.

Many of these auxiliary services—service needs are still unanswered, and evidence suggests that these unsolved issues contribute to high rates of educational disadvantagement.

Audits are not well managed and take too long to resolve. The Council found different staff perform the audits from those who administer programs, leading to frequent misunderstanding of the program's implementation.

The audit procedure has been revised in the past year, and will be examined by the Council. However, some of the key problems in the audit process are not addressed.

One, program personnel are insufficient to accompany auditors, and the Council believes that Federal and state program personnel should be on the audit team.

Number two, currently states are not held accountable when audit exceptions are charged against local educational agencies, whose grant applications were state approved. Thus, a LEA which had its grant approved at the state level might owe large sums of money to the U.S. Treasury with the state owing nothing.

Finally, the moneys which are scheduled to be returned to the U.S. Treasury as a result of audit exceptions are funds which do not target properly to educationally disadvantaged children.

The NACEDC recommends that an amendment allow for repayments required by an audit resolution be spent on Title I eligible children in the district involved.

The bypass procedure for the migrant program and for the nonpublic schools has been designed to be cumbersome, costly, and time consuming. There are almost 100 bypass requests at the U.S. Office of Education today, and two staff to handle the workload.

Review of this procedure and a clear indication from Congress is necessary to strengthen what is an excellent provision in Title I. State administration is uneven today, but much improved over time.

Some states have helped their LEA's develop legal and cost effective programming with Title I funds through frequent interaction and guidance.

Sixteen states add state resources to compensatory education programs which supplement the Title I program. These programs, the Council recommends, should be excluded from the comparability computation if they serve economically and educationally disadvantaged children.

The regulations outlined the legal responsibility of the applicant agencies, but are often written in language unclear to parents and administrators, and need to be simplified.

First, parent involvement regulations should be consistent with other regulations under Title I, to the extent that only the Federal Government should have the authority to promulgate parent involvement regulations.

Secondly, a manual should be developed by the Office of Education to clarify regulations on instructional styles which are legal.

Thirdly, manuals or brochures on subject headings of concern in Title I should be prepared by the U.S. Office of Education, especially if the subject area cuts across several applicable regulations.

The comparability statute is well written, and a reinforcement of the supplement not supplant provisions. Regulations promulgated under this section have repeatedly struggled with indicators of comparability.

The statute states that services must be comparable. The regulations take a nose dive into red tape to account for teachers, longevity, no wide variance, and other details, which don't speak to comparable services.

Direction in the conference report would be helpful to the agency in developing its new regulations. Supplement not supplant provisions have been weakly defended by the U.S. Office of Education and are keyed to the proper administration of the program.

Title I must be extra to the basic program and all children across the LEA must have equal access to the basic program.

The difficulty faced by some states is the addition of local and state resources for disadvantaged children concealing whether or not Title I supplements programs mounted with local and state resources.

Where these resources are targeted to serve Title I eligible children, as we have said above, they should be excluded from comparability computations.

Maintenance of effort is an essential element in the guarantee that Title I will be extra to the basic program. The Council recommended in 1973 that maintenance of effort be flexible enough to reflect declining enrollment, and be computed on an aggregate amount, as well as on a per pupil amount. This recommendation was accepted in the amendments of 1976.

Further, the Council is reviewing the wisdom of a provision on maintenance of effort of auxiliary services which may not come under the usual jurisdiction of the local educational agency.

For example, school nurses are paid as often from health department sources as from school sources. Food and nutrition services are provided outside the local educational agency, as are other welfare benefits, such as eyeglasses and shoes.

Title I allows for these expenditures under strict constraints. However, the Council would like to see that attempts to receive these benefits from sources outside the school system be attempted as a first resource, and that these services be provided to Title I students from Title I as a last resort.

The Council recommends that Title I services follow the child where possible in situations where school district reorganization, due to desegregation and declining enrollment, altered Title I attendance areas.

As early as 1972, the Council reported that this was a difficulty in the administration of Title I.

The Emergency School Aid Act is expected to remedy this problem, but since ESAA is a competitive grant for LEAs undergoing desegregation, it is not effective in addressing these issues.

Following the Title I child is not the primary concern of ESAA. Therefore, if compensatory educational services are to follow the Title I child, it is Title I which must have the assignment and the means to do so.

The Council recommended in its 1977 annual report that individualized educational plans be a part of Title I for each student. I would like to highlight this concern.

Administrators with whom we have talked state that this is good education, and worth the extra work required of individualized educational planning.

Finally, the Council wishes to extend appreciation to you and your bipartisan leadership in behalf of children who have special needs, who depend upon you to champion their cause, and to perform like their more advantaged peers when given the kind of education and the quality of education all children deserve.

The children who are served by Title I may not know where the services come from because to them the extra time and instruction, the auditor retests, the special attention to basic skills, and the success role that they have established for themselves characterize their experience.

Their families, their teachers, their administrators, and thier state and local officials can only express their gratitude to you for providing the means to reverse the trend of lower educational attainment.

Thank you for this opportunity to address the committee.

Mr. FORD. Thank you very much.

Dr. John Crew, Superintendent of Public Instruction, Baltimore City Public School System.

Dr. Crew, I would like to say on behalf of my colleague, Barbara Mikulski—she was here at the time we were supposed to start the hearing, but had to attend to her own committee duties—she made very clear to me I should pay very close attention to you because she said this fellow knows what is going on in Baltimore, and he knows about education.

She is very intense about the fact that you are here because she wanted you to be here, and she wants to make sure that this record fully reflects your feelings with regard to this legislation.

On her behalf, I would like to say she is already one of the movers and shakers of this House, and you have a very strong ally.

[The statement of Dr. Crew follows:]

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OCTOBER 26, 1977

RE-AUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

TESTIMONY BY: JOHN L. CREW, SR.
SUPERINTENDENT OF PUBLIC INSTRUCTION
BALTIMORE CITY PUBLIC SCHOOLS

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ON BEHALF OF THE 154,000 CHILDREN ENROLLED IN THE BALTIMORE CITY PUBLIC SCHOOLS, I WISH TO EXTEND TO YOU MY THANKS FOR THE OPPORTUNITY TO SHARE SEVERAL IDEAS ABOUT THE RE-AUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT.

IN MAKING MY COMMENTS, I AM TAKING AS AXIOMATIC THAT TITLE I OF ESEA IS OF GREAT VALUE TO THE CHILDREN OF AMERICA, AND WITHOUT QUESTION SHOULD BE RE-AUTHORIZED. I WILL NOT BELABOR THE POINT OF ITS WORTH BEYOND THIS FUNDAMENTAL STATEMENT BECAUSE YOU HAVE AVAILABLE REAMS OF STATEMENTS AND A NUMBER OF EXCELLENT STUDIES AND REPORTS ATTESTING TO THIS FACT. I WOULD, HOWEVER, LIKE TO CALL YOUR ATTENTION TO SEVERAL PROBLEMS IN THE ADMINISTRATION OF TITLE I AS SEEN BY THE SUPERINTENDENT OF AN URBAN LOCAL SCHOOL DISTRICT.

FIRST, THE FUNDING OF ESEA, TITLE I, SHOULD MAKE PROVISION FOR ADDITIONAL HELP FOR THE LARGE URBAN CONCENTRATIONS OF CHILDREN. TOWARDS THIS END, I RECOMMEND THAT THE FORMULA REMAIN ESSENTIALLY THE SAME AND THAT THERE BE A PART A, OR BASIC GRANT, DISTRIBUTED THROUGHOUT THE NATION IN ACCORDANCE WITH REGULATIONS COMPARABLE TO THOSE IN USE OVER THE PAST SEVERAL YEARS. MOREOVER, BECAUSE OF THE ATTENDANT PROBLEMS AND HIGH COSTS OF EDUCATION IN OUR BIG CITIES I BELIEVE THERE NEEDS TO BE A SECOND TIER OF FUNDING, OR PART B, TO BE DISTRIBUTED IN MAJOR METROPOLITAN CENTERS. THIS RECOMMENDED SECOND TIER WOULD REPLACE EXISTING INCENTIVE GRANTS AND URBAN/RURAL COMPONENTS WHICH WE BELIEVE HAVE NOT BEEN TOO EFFECTIVE BECAUSE OF INADEQUATE FUNDING.

THE SECOND PROBLEM AREA I WOULD LIKE TO NOTE IS THE CONCEPT OF COMPARABILITY. LET ME SAY THAT I THINK THAT COMPARABILITY AND ITS OBVERSE CONCEPT, SUPPLEMENTING VERSUS SUPPLANTING FUNDS, ARE GOOD CONCEPTS. WITHOUT COMPARABILITY PROCEDURES WE WOULD HAVE NO PRACTICAL WAY OF ENSURING THAT LOCAL AND STATE FUNDS WERE DISTRIBUTED TO TITLE I SCHOOLS ON A BASIS COMPARABLE TO THAT OF NON-TITLE I SCHOOLS. EVEN THOUGH WE BELIEVE THAT COMPARABILITY

PROCEDURES SHOULD BE RETAINED IN ANY RE-AUTHORIZATION OF ESEA, WE ALSO THINK THAT SEVERAL OF THE EXISTING PROCEDURES MAKE THE ADMINISTRATION DIFFICULT AND OUGHT TO BE MODIFIED.

SCHOOLS WOULD CERTAINLY BENEFIT FROM A SHIFT IN THE PERMISSIBLE RANGE OF VARIANCE FROM THE EXISTING 5 PERCENT FROM COMPARABILITY STANDARD. WE RECOMMEND A SHIFT TO A 10 PERCENT PERMISSIBLE VARIANCE. MOST NON-COMPARABLE SCHOOLS IN OUR SYSTEM ARE OUT OF LINE BY A MARGIN OF 5 TO 10 PERCENT. BROADENING THE RANGE OF PERMISSIBLE VARIANCE WOULD REDUCE THE NUMBER OF NONCOMPARABLE SCHOOLS. THIS ADDED FLEXIBILITY WOULD RESULT IN FAR LESS DISRUPTION TO PUPILS AND STAFF STEMMING FROM ATTEMPTS TO ACHIEVE COMPARABILITY AT A 5 PERCENT LEVEL.

WE WOULD ALSO LIKE TO SEE THE COLLECTING AND FILING DATES FOR COMPARABILITY DATA SHIFTED. COMPARABILITY DATA COULD BE COLLECTED AS OF JUNE OF THE PRECEDING SCHOOL YEAR. THIS CHANGE WOULD ALLOW SCHOOL SYSTEMS TO ADD THE PROJECTED ENROLLMENT TO THE NEW FISCAL YEAR BUDGET AND STAFF THE SCHOOLS OVER THE SUMMER TO MEET COMPARABILITY REQUIREMENTS. CONTINUING ADJUSTMENTS COULD BE MADE THROUGH SEPTEMBER OF THE NEW SCHOOL YEAR, WITH

COMPARABILITY ASSURED BY THE END OF THE MONTH. THE CHANGED DATES WOULD HELP ELIMINATE DISRUPTIONS TO INSTRUCTION WHICH NOW TEND TO OCCUR IN ATTEMPTING TO ACHIEVE COMPARABILITY.

THE EXISTING MINI-COMPARABILITY REQUIREMENTS RELATING TO SERVICES FOR HANDICAPPED STUDENTS ALSO CREATE SOME DIFFICULTIES FOR US. PRESENT TRENDS TOWARDS THE MAINSTREAMING OF EXCEPTIONAL CHILDREN MAKE IT VERY HARD TO PRORATE STUDENTS TO ARRIVE AT FULL-TIME-EQUIVALENCY (FTE) DATA FOR EXCEPTIONAL CHILDREN. FURTHER, THERE IS A WIDE VARIANCE IN TYPES AND NUMBERS OF SERVICES REQUIRED FOR DIFFERENT CATEGORIES OF EXCEPTIONAL CHILDREN (THAT IS, CERTAIN EXCEPTIONALITIES CALL FOR MORE SERVICES THAN OTHERS). IT ALSO SEEMS UN-NECESSARY TO CALL FOR MINI-COMPARABILITY WITHIN TITLE I GIVEN THE SAFEGUARDS SET FORTH IN THE REQUIREMENTS OF P.L. 94-142, THE EDUCATION OF ALL HANDICAPPED CHILDREN ACT. WE, THEREFORE, RECOMMEND A RETURN TO THE PROCEDURE OF EXCLUDING FROM THE COMPARABILITY REPORT DATA ON EXCEPTIONAL CHILDREN WITHOUT THE ALTERNATIVE REQUIREMENT OF THE MINI-COMPARABILITY REPORT.

FINALLY, WITH RESPECT TO COMPARABILITY, WE WOULD LIKE TO SEE THE

EXISTING PROCEDURE FOR SEA SUSPENSION OF PROJECT APPROVAL FOR NONCOMPARABILITY CHANGED. CURRENTLY, IF THERE ARE SEVERAL SCHOOLS ASCERTAINED TO BE NONCOMPARABLE, AND THE DISTRICT FAILS TO MAKE NECESSARY ADJUSTMENTS ACCORDING TO REQUIRED SCHEDULE, THE ENTIRE PROJECT OF THE DISTRICT MAY BE SUSPENDED. IT SEEMS FAR MORE EQUITABLE TO THE CHILDREN SERVED IF THE SUSPENSION WERE CARRIED OUT ON A SCHOOL-BY-SCHOOL BASIS WHERE NONCOMPARABILITY EXISTS, RATHER THAN ON A DISTRICT-WIDE PROJECT BASIS.

THE LAST POINT I WANT TO MAKE ABOUT TITLE I CONCERNS THE REQUIREMENT OF MAINTENANCE OF FISCAL EFFORT. THIS REQUIREMENT CAN BE DIFFICULT FOR ALL SCHOOL SYSTEMS, BUT SEEMS TO BE PARTICULARLY SO FOR BIG CITIES. TAXPAYERS ACROSS THE COUNTRY ARE CONCERNED ABOUT MOUNTING TAX BILLS IN THESE TIMES OF INFLATION. AS A CONSEQUENCE WE HAVE SEEN INCREASING NUMBERS OF BUDGET CUTS FOR GOVERNMENT PURPOSES. THE PROVISION OF PUBLIC EDUCATION CONSUMES THE MAJOR PORTION OF LOCAL TAX FUNDS, AND WITH DECLINING ENROLLMENTS IT APPEARS THAT WE MAY BE FACED WITH A DECREASE IN THE ACTUAL AMOUNT OF FISCAL EFFORT EVEN THOUGH THE NUMBER OF DOLLARS BUDGETED MAY REMAIN THE SAME OR EVEN BE INCREASED.

THANK YOU.

I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY WISH TO RAISE.

STATEMENT OF JOHN L. CREW, SUPERINTENDENT OF PUBLIC INSTRUCTION, BALTIMORE CITY PUBLIC SCHOOLS

Dr. CREW. Thank you, Mr. Chairman.

Certainly I am appreciative of the remarks by Congresswoman Mikulski. My name is John L. Crew. I am the Superintendent of the Baltimore City Public Schools.

On behalf of the 154,000 children there, I would extend my thanks for the opportunity to share several ideas about the reauthorization and other matters of the Elementary and Secondary Education Act.

In making my comments, I am taking as axiomatic that the committee has heard many glowing statements about Title I and its contributions, and I will not belabor that point.

However, I think that the fundamental of this is already established, of reports of success of Title I. So, I would like to stick to the assignment, and comment on several problems in the administration of Title I as seen by an urban school superintendent.

First, the funding of ESEA Title I should make provision for additional help for the large urban concentrations of children. Towards this end, I recommend that the formula remain essentially the same, and that there be a part A, or basic grant, distributed throughout the nation in accordance with regulations comparable to those in use over the past several years.

Moreover, because of the attendant problems and high costs of education in our big cities, I believe there needs to be a second tier of funding, or part B, to be distributed in major metropolitan centers.

This recommended secondary would replace existing incentive grants and urban rural components which we believe have not been too effective because of inadequate funding and cumbersome administrative procedures.

The second problem area I would like to note is the concept of comparability. Let me say that I think that comparability and its obverse concept, supplementing versus supplanting funds, are excellent. I think they are very good concepts.

Without comparability procedures you would have no practical way of insuring that local and state funds were distributed to Title I schools or pupils on a basis comparable to that of non-Title I schools.

Even though we believe that comparability procedures should be retained in any reauthorization of ESEA, we also think that several of the existing procedures make the administration difficult and ought to be modified.

Schools would certainly benefit from a shift in the permissible range of variance from the existing 5 percent from comparability standard. We recommend a shift of 10 percent permissible variance.

Most noncomparable schools in our system are out of line by a margin of between 5 to 10 percent. Broadening the range of permissible variance would reduce the number of noncomparable schools, and not essentially affect the intent of the Act.

This added flexibility would result in far less disruption to pupils and staff stemming from attempts to achieve comparability at the 5 percent level, especially during the school year.

We would like to see the collecting and filing dates for comparability data shifted. Comparability data could be collected as of June of the preceding school year. This change would allow school systems to add the projected enrollment to the new fiscal year budget and staff the schools over the summer to meet comparability requiremetns.

Continuing adjustments could be made through September of the new school year, with comparability assured by the end of the month. The changed dates would help eliminate disruptions to instruction in the school year after the October date, a movement in our case of 50 to 75 teachers during a school year.

Still on comparability, we think the mini comparability requirements relating to services to handicapped students also create some difficulties for us and other systems. Present trends towards the mainstreaming of exceptional children make it very hard to prorate students to arrive at a full-time equivalency for the various categories of special education or exceptional children, as we call them.

Further, there is a wide variance in types and numbers of services required for different categories of exceptional children. Certain exceptionalities call for more services than others.

It also seems unnecessary to call for mini comparability with Title I given the safeguards set forth in the requirements of Public Law 94-142, the Education of All Handicapped Children Act.

We therefore recommend a return to the procedure of excluding from the comparability report data on exceptional children without the alternative requirement for the mini comparability report.

Finally, with respect to comparability, we would like to see the existing procedure for the state educational agency suspension of project approval for noncomparability changed.

Currently, if there are several schools ascertained to be noncomparable, and the district fails to make necessary adjustments according to a required schedule, the entire project, program, for the district may be suspended.

It seems far more equitable to the children served if the suspensions were carried out on a school by school basis where noncomparability exists, rather than a districtwide program or project basis.

The last point I want to make about Title I concerns the requirement of maintenance of fiscal effort. This requirement can be difficult for all school systems, but seems to be particularly difficult for big cities.

Taxpayers across the country are concenred about the mounting tax bills in these times of inflation. As a consequence, we have seen increasing numbers of budget cuts for government purposes.

The provision of public education consumes the major portion of local tax funds, and with declining enrollments it appears that we may be faced with a decrease in the actual amount of fiscal effort even though the number of dollars budgeted may remain the same or even be increased.

I would summarize the five points that we made in this presentation: One, being the need for reauthorization; two, being the notion of two tiers in Title I, part A and part B, with part B being a second layer of funds whch recognizes the difficulties of the big cities and elimination of parts B and C as they currently exist; three, recommendation for an increase between from 5 to 10 percent for the variance allowed in the guidelines of comparability for each school; four, the solution or elimination of requests for many comparability details associated with the area of handicapped children, or special education; and finally, the need to recognize that in the maintenance of effort funds, the large cities can actually increase, but be in a sense penalized for not keeping the exact same ratio of our maintenance of effort.

So, we thank you very much, Mr Chairman, and committee members, for allowing us to indicate these points of concern to you.

Mr. Ford. Mr. Kildee?

Mr. Kildee. Thank you, Mr. Chairman.

I would like in a special way to welcome my former colleague, Senator Faxon, here this morning. Senator Faxon and I arrived in the Michigan Legislature together. He had had some prior experience in Lansing, having been a delegate to the constitutional convention, along with Chairman Ford, who wrote the Constitution under which Michigan is operating at this time.

We won't go into the merits of the Constitution. You were in the minority at the time it was written.

But Jack's dedication to education, coupled with his knowledge of the needs of education, have really been a blessing to the State of Michigan, and to the legislature.

I personally enjoyed working with Senator Faxon during my 12 years in Lansing. Senator Faxon is chairman of the Education Committee of the Senate. I was chairman of the Education Subcommittee of the Appropriations Committee.

We enjoyed working together. We generally were able to achieve some breakthroughs in education. I just want to welcome you here this morning, Senator.

Mr. Ford. I would like to add that in spite of the youthful appearance of the Senator, it should reminded he was writing that Constitution back in 1961.

It isn't turning out to be one of the great, all-time historical documents of our state, but as you mentioned—and we always like to get this on the record—the Democrats were in a very small minority in that convention.

As I recall, we actively campaigned across the state to encourage the people not to adopt the convention's product when we finished.

That may be taken care of in the future.

Senator, we put your full statement in the record. At this point you may add to it or summarize as you find most convenient.

[The statement referred to follows:]

STATEMENT BY THE HONORABLE JACK FAXON
SENATOR FROM THE 7TH DISTRICT, STATE OF MICHIGAN

before the

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON ELEMENTARY, SECONDARY
AND VOCATIONAL EDUCATION

October 26, 1977

Mr. Chairman, Members of the Committee:

My name is Jack Faxon. I am a State Senator from Michigan. I am also the President Pro tempore of the Michigan Senate. During my fourteen years in the Legislature, I have served on various committees dealing with education. For the past three years, I have been chairman of the Senate Education Committee.

I wish to express my thanks to you, Mr. Chairman, and the other members of your committee for the opportunity to testify on the timely subject of Title I funding. I intend to support the concept of Title I, and propose some changes to make it more effective.

Currently, Title I funds are allocated yearly. The path these funds must travel from Washington to the individual school can involve a time period of up to six months. Frequently, this mitigates against a school extracting full value from the monies and has the effect of inadvertently subverting the intent of the program. In all candor, I think it can be assumed that as the end of the school year draws near, many schools are put in the position of creating ways to spend these funds.

The funding mechanism must be altered to allow for appropriate planning. Sorely needed stability could be accomplished by changing the procedures to encourage three-year funding. However, even three years might be too short a time for measuring long-term success. The funding mechanism must reflect the importance we place on pre-testing. It also requires there be some stability in the student population in the Title I schools.

In Detroit, where the schools operate under court-ordered desegregation, children from Title I schools are bused to non-Title I schools (and vice versa). Busing thus makes the evaluation highly questionable. If the funding does not follow the child, there is no satisfactory measurement, except to describe a given demographic situation, rather than an actual statistical evaluation of student performance.

The Title I program constitutes a commitment to the educationally disadvantaged children of our nation, and you must shoulder the awesome responsibility of insuring the optimum return on every dollar spent. Without careful planning, the potential for haphazard spending and programs becomes very real.

While school districts argue for more time to develop programs, one could generally respond that it may not be a question of supplemental programs when the basic diet is deficient. It would be similar to arguing what kind of desserts you are going to serve at a dinner when you have no entree for the occasion.

Funding should be mainstreamed into the actual operation of the school without the necessity of additional, elaborately presented programs. Such a simple matter as a 25% reduction in class size could be just as, and perhaps, even more meaningful than all the fancy documentation by academicians for programs.

The true beneficiaries of three year funding would be the children. I am most familiar with the Title I program in Detroit and am happy to say we have witnessed significant results. But one cannot help but pause and reflect what greater gains our children might have realized were more time available for planning. Three year funding, I'm convinced, is more than just a way to increase efficiency. It is crucial to the continued success of the Title I program.

But the funding mechanism requires still additional emphasis. Just as all children do not learn in the same fashion, all areas of the country do not possess the same educational problems. I would, therefore, urge you to consider allocating Title I funds to a local district without specific guidelines as to how they should be applied.

The guidelines that are provided must be flexible enough to allow for school districts to incorporate what are their unique characteristics without having to develop a document to satisfy some bureaucratic demands.

The type of education each community is able to afford its children is dependent on many variables. For instance, to the north of Detroit resides the City of Midland, Michigan, home of the Dow Chemical Company. Significant to this municipality is that it has more Ph.D's per capita than any other city in the United States. Obviously, the proximity to Dow has a deep and abiding effect on the communtiy as a whole. To its credit, Dow donates a great deal of time and money to the city and its presence is a major factor impinging on the educational environment of the community.

Also impacting on the educational climate of other Michigan cities is the presence of automobile plants. One need only drive Interstate 75 from Saginaw south to Detroit to realize the importance of the automobile industry to the cities of Saginaw, Bay City, Flint, Pontiac and Detroit. But my point is that where one community is heavily oriented to research, others are equally influenced by the emphasis on industrial production.

Within a relatively small area, educational programs can and do differ markedly. These local communities are in a far better position to assess the weak and strong points of their programs than an individual or group not attuned to the characteristics indigenous of that community.

I would hope that this committee takes into account the differences that exist from school district to school district and that local personnel are in a better position to determine how funds should be allocated.

One of the many findings brought to light by Title I is the fact that we know very little about how disadvantaged children acquire basic learning skills. We do know that the most predictive element for children's success is the example of the parent: parent attitudes, parent achievement, and education. That is the first major impact upon children. Children who come from homes where the parents do not provide for the children's participation in the family unit, will reflect that level of achievement that reflects the parental expectations. And this is brought into the school, so that the parents who are non-verbal with their children will have non-verbal children.

Specifically, I am recommending that additional funds be allocated to the area of research and development. We need to determine why some children succeed where others continue to fail. We need to determine why a program is heralded as great in one district and is an abysmal failure in another. We need to determine why a certain method of teaching generates significant results in one setting and is ineffectual in another. These are questions the probing of researchers can help resolve.

Once we get some answers to these questions, then there must be an effective channel of implementation established to insure the information is utilized to the fullest extent. This mandates a greater concentration of funds to the area of in-service training.

Currently in Michigan, less than 2% of the Title funds are used for staff development. That percentage must be placed alongside another finding that states the tutorial method of teaching Title I children has met with success.

The main objective in this area must be to maintain an informed, responsible, and educated staff. This must be a key priority for the actual school operation if any measure of success is to be seen among the children. In Michigan, we require doctors and other professionals to submit regularly evidence of training to update their skills in order to obtain license renewals.

It is essential that teachers who have been accustomed to one population and are now teaching a different population, must be able to move with the times by having brought to their attention the most recent materials available, with the kind of insight that can assist them with the children. Teachers cannot be expected to be responsible for these children without recognizing that they might need assistance and that assistance should not only include the availability of added training, but also the requirement for added training as a vital part of an improved program.

I would recommend, therefore, that the funds set aside for staff development be increased to reflect a figure of 5% of the Title I budget.

I am concerned about the recipient of services provided under the Title I program. Currently, educational services under the auspices of Title I are geared to the K-12 student with emphasis on the elementary level. I would like to see this broadened to include more effort placed at the Junior and Senior High, as well as the pre-primary level.

Although I agree with focusing efforts on younger children, I believe that without reinforcement in the later years, many of the valuable educational traits acquired in the primary grades will be lost. But of far greater consequence is the attention a child receives before entering the formal educational system.

I would call for funding that would insure the availability of a diagnostician for every child in the country. Many children enter our schools with undetected visual impairment, hearing difficulties, perceptual problems and a myriad of other impediments that prevent a successful academic experience. Frequently, many of these problems can be rectified with professional attention. But without recognition, they could hamper a child for the rest of his or her life and all the money in the world couldn't help.

This professional diagnostician would work closely with the staff of that individual school. If a problem is detected, an educational prescription could be written for the child. This process would be all the more effective if, as I suggested earlier, an appropriate amount of funds were set aside for teacher in-service training. Through this additional training the instructor would be able to interpret and act on the prescription.

The beneficiaries of this endeavor would be the children. Our educational system cannot be viewed as a miracle performer. We cannot continue giving our teachers problems without helping them with solutions. A professional diagnostician working with a properly trained staff would be an invaluable tool to detect and overcome educational impairments that could very well take its toll on the entire educational career of a child.

My next recommendation addresses the state's reponsibility in the Title I program. Michigan is one of the 19 states who allocate complementary funds to Title I monies. Under the heading of what we refer to as Chapter III, school districts in Michigan receive monies earmarked for what has come to be known as "the basics." It works well and is something the educational community in our state can point to with pride. But one reason for its success is that it serves as an incentive. This state-sponsored program is needed in other states. I would urge you to evaluate Michigan's program, as well as those in the 18 other states, and incorporate these successes into the federal guidelines for implementation.

One major problem facing some school districts across the nation, including many in Michigan, is the proliferation of community advisory boards. In Michigan, the problem associated with Advisory Councils mandated by Title I is compounded by the fact that each school must have an advisory council before it can receive funds under our Chapter III program.

Frequently, the composition of the Title I Parent Advisory Council is the same as its Chapter III counterpart. This results in another committee and another meeting for a group of volunteers that have already been "committeed and meetinged" to death. If this requirement could be woven into the existing volunteer framework of a school district, the quality of the parental contribution would not be reduced and the streamlined product would work to the benefit of the children who are the recipients of the services.

The final major point I would like to make in my testimony is to call attention to an area that, for all intents and purposes, has been neglected. It involves an incorporation of the Arts into the education program of our schools.

My conviction that the Arts should have a rightful place in the

Title I program is not based only on the aesthetic values students would accrue, although that would be a favorable by-product. This recommendation is predicated on evidence that the Arts have intrinsic educational worth in those areas that the American public is deeply concerned about, the basics.

The arts represent a process approach to education. When John Dewey made reference to "learning by doing" he was in fact confirming the activities necessary for children to develop. The arts represent that aspect of doing that represents creativity.

There are those who will advance the argument that such a recommendation should be categorized as fostering the outmoded notion of "Art for Art's Sake." Nothing could be further from the truth and such thinking, with all due respect, is the product of misinformation. Before considering the educational benefits inherent in the Arts, I think it would be productive to briefly lay a foundation for my case.

For too long, the Arts have been a disenfranchised step-child of education. It was a non-essential frill: The last component of a budget and the first to go. Simultaneously, athletics were extolled as the link between "a sound mind and sound body." When cuts were necessitated, the Arts found they didn't have the emotional community support of athletics. How many door-to-door campaigns designed to "save the Arts' do you recall?

A major factor for the Arts being viewed as second-class citizens by the educational community, can be traced to the individuals who reside in this discipline. I readily acknowledge that proponents of the Arts have been far too timid in articulating our needs. We could take a page from our brethren in athletics to determine how a shot of adrenalin should be administered.

My intent here today is not to take advantage of this forum to present a case for the Arts in the general school curriculum, however admirable that would be. My purpose is to focus your attention on the educational worth of including the Arts in Title I funding.

Roger Williams, writing in the Saturday Review poignantly stated:

> "It is known that before the age of about six the brain increases in'gray matter,' that is, in cells or neurons. After that, throughout life, the neurons make countless interconnections, associations based on such sensory perceptions as sight, touch, and sound. By an as yet undiscovered process, these associations are stored in the brain as learning. They are critical to our ability to recall events from our past; .... If these connections and associations are not made at an early age, it is probable that the brain's neurons suffer something analagous to muscular atrophy, and the development of the entire organ is, to that extent, stunted."

Although the evidence is not as overwhelming, there are those who believe that without the stimulation provided by the Arts, certain developmental skills are retarded. However, evidence does support the importance of the psycho-motor development of the child.

What we're discussing here is an integral component of the learning process of a child. It would be simple if we could isolate portions of the child's development and say "we shall focus our efforts here." But the development process is an all-encompassing one where certain actions build on others.

Admittedly, we know little of this process. We do know, though, that a correlation does exist between tactile expression and the academic performance of a child. It is unfortunate, but many children who fall within the eligibility guidelines for Title I are severely lacking in this aspect of their development.

Once, while in college, a student was involved in a typical undergraduate plea for understanding from one of his professors regarding a grade on an essay examination. He quoted the book chapter and verse and still the professor would not agree that he had successfully made the point. Finally, the professor turned to the student and said, "You can recite the text from memory and I still could not justify your answer. The reason you are here in college is not to memorize facts, but to establish relationships. That is what is known as the educational process."

Let me now refer to a program centered in Columbus, Ohio. Again, quoting from the Williams article:

> "Test scores of the children in arts-centered programs generally declined during the first year or two, then rose to surpass the norms in the ensuing years. At arts-centered Eastgate Elementary School, where one-third of the children are from families receiving welfare, the number of sixth graders reading at or above grade level increased sixfold during the school year 1973-74. In the same year, students in three math categories improved their test scores from 14 percent at grade level to 39 percent, from 14 to 70, and from 10 to 73."

This I would point out addresses the concern of those who advocate we should be gearing our educational programs to the basic skills.

Who is to say that basic communication skills cannot be acquired by reading the great works and then by trying on those budding wings of a playwright and producing an original drama? Who is to say that certain periods of history cannot be studied by those artists who left their viewpoints on canvas? Who is to say that a valuable principle of physics cannot be mastered by a student investigating what gives a Stradavarious its fine, distinct tone?

The Arts constitute an unexplored avenue that children who are economically and educationally deprived may find is the road to successful academic achievement. I sincerely hope this committee does not underestimate the importance of "experience" and its role in the educational process.

The Arts should be viewed as a process through which cognitive skill development occurs, it is in the "doing" that the brain develops its facility.

We have before us the most advanced educational system ever known in the history of civilization. Yet we cannot rest on our laurels. For it is the journey itself that becomes the educational process. And we must persist in our efforts to make the journey as meaningful and productive as humanly possible. This is a continual search for ways to enhance that journey. I am convinced that inclusion of the Arts in the funding for Title I would be a major step in that direction.

Education in our country, therefore, is not only necessary for the well being of the individual, but essential for the preservation of our society.

Thank you.

STATEMENT OF THE HONORABLE JACK FAXON, A STATE SENATOR IN THE MICHIGAN STATE SENATE

Mr. FAXON. Thank you very much for that very kind introduction. I certainly miss Mr. Kildee from the Senate. The support that I had from you was far greater than what I have had from your successor.

I note that as people have moved to Congress, their affiliation with the constitutional convention has become more and more remote.

I will let my statement sent in to you stand, and just make some comments in general about my observations.

I am not here to speak for the Detroit public schools. You will have a very good representation from the superintendent in that regard. But, I will give some of my observations as a Senator and chairman of the Education Committee.

I did ask people from the Department of Education and others to comment to me in advance of my coming here, so I could share with you some of their concerns. But, I could probably have told you that if I hadn't asked them in the first place.

The first question I think that ought to be re-emphasized is the area of reauthorization. I think this concern is most significant becuase the ability of those districts to raise additional revenue either locally or from state resources is very, very poor and the prognosis isn't going to be much better.

I think that in spite of our discussions over refinancing of education in Michigan, what most people are really talking about isn't so much a matter of getting more money for education, as much as they are talking about getting the money from different places for education, and that the total dollars that can be anticipated for expenditures over the next few years, at least in Michigan, is not going to be significantly altered, although the plans that have been proposed in the way of a statewide referendum, in the way of constitutional amendment, in the way of eliminating the dependency upon property taxes, is often thought of as a kind of a savings to the taxpayer.

But all of that is just a reshifting of the tax burden over to income taxes and other taxes that would still pick up the same expenses. So, the overall prognosis isn't that there will be any large change in dollar spending, but that there might be a change in where the dollars are coming from.

Given that, the needs for the education of those disadvantaged children will remain even greater because the gap that exists today will intensify if the dollars are not appropriately spent to achieve some kind of balance between the needs and the amounts that are actually spent.

Now, one of the things of course I have been concerned with in the area of any funding mechanism is how much time you have for the program to begin, when do they get the money, how soon do they have to spend the money, and what type of evaluative design you have for showing how the money has generally been spent and the kind of success that you can demonstrate with the students.

I think school districts need to know well in advance what they are going to have, and they need to have enough time in which to spend it, and not a one-year period.

As far as the measurement is concerned, if the dollars are sent to the school, and if a school district, like Detroit, is under a busing order, where the students are shifted from one school to another, then it is very likely that what could happen is that you will have young people who were qualified in one school sent to a school that was not qualified, so that the need does not follow on the child but remains with the school.

I think that we have to be sure that every effort is made to see to it that those who are in need of the services that are provided for under this particular program, that those services remain with the child, and not necessarily with the school.

Now, as far as the evaluation is concerned, I think one of the points that comes to my mind is just at what point in the process do you evaluate. We can evaluate in the beginning process to determine whether basic skills are being achieved, insofar as cognitive development in reading and math is concerned.

But the long-range view of evaluation, we really cannot assess it unless we follow longitudinally those students who were in the program years ago and see where they are years from now.

I think the full impact of a program of this magnitude really isn't going to be properly perceived in terms of its totality of experience without having to really look at it in terms of a 10- and 15- and 20-year time span, becuase it is those kinds of development of skills that occur early that often do not have a chance to appear in the child's expression until he becomes a more mature person later in life.

I can often think back to my own exprience, if I can go back to my days as a teacher, some years ago, that if I had to base any kind of assessment about the prognosis of students that I had seen then on the basis of all the evidence that I had in testing and otherwise, it probably would have been very different from what I see today, and that some of those things that we often do as teachers are not realized until ten, 15 or 20 years later.

I think Mr. Kildee will recall that from his days, too, that we often cannot judge even on an empirical or testing basis what can likely occur as a consequence of educational inputs early until much later.

So, evaluation is fraught with many errors, one of which, of course, is the pretesting, if that pretesting is with one population and then the population served is another.

So, unless we are absolutely certain that we are following the child, it is not likely that the kind of evaluative results will be as meaningful as they might otherwise be.

Now, I am often concerned about the degree to which guidelines or rules are passed on down from central bureaucracies to state bureaucracies, to city bureaucracies, and in the process the filtering that takes place means that sometimes the person at the end of the scale, the person who is at the ultimate end of the line, the teacher, sometimes doesn't realize that anything has actually happened.

The objective that most school districts will actually express is the idea that if they were given the greatest degree of latitude to take the funds that were made available to them, that they could probably do a far better job than if they had to try to work the dollars into the kinds of structural outlines that are stipulated in advance, and that much of the paperwork that is generated in the process of the receipt of grants is actually created as a result of the guidelines in the first place to kind of fill in the spaces rather than to deal with the actual problems of trying to address the needs of children who are disadvantaged.

So, I think that sometimes this preoccupation with filling in the missing blank, which is a part of the educational process, has gone too far in terms of the kinds of requirements that may put school districts in the business of just trying to fill in reports that are not necessarily relevant to what they want to do or what they should be doing, but are being placed on them as a requirement on the part of the authorities of the central place in order for them to continue their qualifying for funding.

I think, too, that one of the most significant aspects of assistance that you can give to a school district for early elementary might simply be a major reduction in class size, and that aside from any other programs that might occur, that might be one of the most singularly important from the standpoint of attempting to more individualize the program for children and to provide for closer relationship between the child and the teacher.

Now, I have said something about the guidelines having to be as flexible as possible. I think another concern that I often hear from education people is that there ought to be research and development monies as a very important part of trying to find out what works and what doesn't work.

That often is a self-serving concern on their part. I am not sure that I completely concur with that.

I do want to comment on these parent committees that are set up. Somewhere in my remarks I make reference to that.

This idea of providing for parental education may be a secondary point in what is the obvious educational objective. I don't believe that education is necessarily served by attempting to dilute the impact of dollars in an attempt to bring about some type of social cohesion through the involvement of parents in what is ostensibly some meaningful direction over the educational program of the schools.

The primary concern of parents is that the schools be productive, that the schools are successful in providing for the children. It is not necessarily to take a few people who feel inclined to activate their senses and verbal skill by allowing them to interact with their other friends on that committee, and somehow become a kind of a group that serves as a parent group and oversees almost to an excessive extent what ought to be an educational function of the school.

Now, there is a legitimate role for parents, but it is not and should not be tied to the program itself. If the importance of learning is to be one which is shared between school and community, which is important—the school can only go so far, parents need to be involved in the other part—then the degree to which parents are involved can be achieved through other means that are not directly related to the use of funds or to particular programs that are offered in the school.

We have committees upon committees and frequently you get the same people sitting on these committees, and their level of contribution is only as great as their own capacity to express themselves.

That may not be terribly significant, given the nature of the fact that their backgrounds and their educational achievement is not necessarily the ones to which the ideal objective of education ought to be directed.

So, I would think that if there are things that we want to do to bring parents into a closer association with the schools, then that mechanism ought to be separate from a composite with the Title I funding, and we ought to provide for community school use, as Mr. Kildee will testify to, that there are ways of bringing schools into more meaningful relationships with the communities, but not at the expense of the students.

Now, we generally recognize that if we are dealing with disadvantaged children—and I want to talk about that in terms of low income, poverty level—not that every generalization works with poverty level students, but we can draw certain kinds of conclusions on that type of population that can be appropriately applied without being too deviant from what is normally expected under those circumstances.

If we take the area of the poverty level, then the first impact that we need to recognize is an early intervention into that child's educational exposure. Early intervention means preschool programs are very important.

Now, if a child comes from a middle class educated background, it doesn't really matter whether the child goes to a preschool program or not. In my experience as a director of a private school in Detroit for the past ten years, I have seen come in from schools where they have been in two or three years in a preschool program, and some who just started kindergarten for the first time, and there is no distinct difference in the learning that occurs in the following year or two.

So, the only place where you really get an impact in terms of the preschool program is where the children in their home settings were not exposed to the kinds of experiences that middle income and educated people provide for their children.

A family that is child centered will give children at a very early age experiences in verbal skills, experiences in manipulative skills, in creative skills, that automatically begins to acclimate that child to the type of future learning that is going to take place.

But if a child comes from a home environment where there is not much interaction between parent and child, where there is no great conversation going on, where the child is not treated as an equal member of the family, where the child might be frequently taken care of by a sibling which has less of an interest in the nature of the responsibility, that child is going to be significantly at a disadvantage when they start school.

Unless something is done early to address that problem, that disadvantage will carry itself through and maintain that same kind of cycle that we have observed over the past many years.

So, what makes the difference is early intervention with preschool programs that should be made available for children who are eligible, and to do so in a way that not only involves the child in the process of learning to do these things, but involves the parents.

One of the examples I look to is the parent's cooperative preschool movement we have in the State of Michigan, where parents work with the children, with professional direction, so they learn parenting skills at the same time they are learning with the child some of the things the child ought to learn in the way of skills that will make a difference for them in their future years.

Now, if programs could be addressed to establishing some form of model of parent cooperative type programs throughout the public schools, and bring the parents into working with the children, so that the parents develop some of these parenting skills, the disadvantaged beginning that children experience when they begin in kindergarten would be significantly altered.

You would at least have some recognition of the involvement that children have in that process.

Now, in the subsequent years—and there are two other points that I see I have made here. One of the points has to do with teachers needing training. The teachers are trained initially, and all of us who have gone through education have had our exposure to these programs.

Once the teacher receives a license and teaches that is considered adequate sustaining for the licensure. In the case of the medical profession in Michigan, we require every year they complete an additional number of hours to be certified by their respective boards.

We don't do that in teaching. However, the teaching profession is much in need of continuous input through the stimulus of outside events as any other profession. The requirement that teachers of the disadvantaged have continuous exposure in these areas certainly is a wise one and should be increased.

I see you have 2 percent fund for staff development. It should go at least to 5 percent, and even that might not be enough if the objectives of improving the staff are really one of the uppermost concerns that people have.

Now, another area that I have often dealt with in terms of the success of programs is what I like to call a school diagnostician. I know we call these people school psychologists, sometimes we call them school specialists.

But what we really need to have with children who are in need of assistance is a diagnostic type service that takes an individual child and attempts to programmatically deal with that child's growth and needs.

If we can identify early in that child's experiences the problems that may have developed in terms of reading problems, because of visual sensitivity, or hearing problems, or we can identify a lack of motor skill development, if we can identify some of these things and a teacher knows these things in advance of having the child, then a great deal of good can be accomplished by the planning for that type of individualization of program.

Individualization is the most successful means through which an individual child can achieve in an educational environment in the early grades if it is in fact conducted in a professional way under the direction of people who are knowledgeable about the area, who have the skills there, who have the psychological test and the material you have to have in order to do this correctly.

I cannot emphasize strongly enough the need for sustaining some level of diagnostic services at the beginning level.

Now, in another area that I think is equally important—I have aleady dealt with parent advisory Councils as having sometimes a rather ludicrous function that ought to be modified in order to provide for other types of inputs form people, not exclusively the parents—but another area that is important, and Representative Kildee will recall this very strongly, is my great concern for the arts in education.

All too often the back to the basics movement of this country has tended to view basic education in much of the same fashion as the McGuffey Reader in the 19th century was considered the basic primer for reading.

Those things associated with creative life were not necessarily looked upon in the same glorious fashion that we have always looked upon those rudimentary virtues of Calvinistic origin.

Now, given that context, I would say that the arts have acquired a good deal more importance by not only one's estimation as an empirical observation, but certainly by current studies that have been done that indicate that there may in fact be brain under development occurring as a result of the lack of children being exposed to creative experience early in their educational life.

This article that appeared in the Saturday Review recently, written by Roger Williams, and I will just read this briefly, 'It is known that before the age of about six the brain increases in gray matter; that is, in cells or neurons. After that, throughout life, the neurons make countless inteconnections, associations based on such sensory perceptions as sight, touch, and sound.

"By an as yet undiscovered process, these associations are stored in the brain as learning. They are critical to our ability to recall events from our past;....If these connections and associations are not made at an early age, it is probable that the brain's neurons suffer something analagous to muscular atrophy, and the development of the entire organ is, to that extent, stunted."

Now, there may be some that might not necessarily subscribe to that strong a statement. But the idea that young people are being stunted by the absence of creative activity and that this creates a permanent brain dysfunction is an alarming kind of fact, even if it is proposed—it is a large bit of information.

One of the reasons that I bring it to your attention is that the elementary schools have in the past years not given adequate recognition to the involvement of the arts as a very viable part of their total school commitment, and that the arts for the children is the very process through which they learn.

If you take a look at the difference between a kindergarten class and a third grade class, you find in kindergarten children moving around dancing, singing and enjoying school. In the third grade they are sitting down and there is less of that type of volatility that gives expression to the joyousness of learning.

Given that context, it would seem to me there ought to be a great emphasis placed upon creativity and the involvement of people in the process of learning in the very elementary grades, so that that cognitive skill development and brain function that is associated with those interrelated activities can be appropriately applied and that the individual not have to suffer the permanent disability that I think some people have when they are not exposed to creativity early in life.

Given that I think we could expect certain goods to come out of it. I think probably young people who develop a sense of creativity become better in self-image, they develop a better self-concept, they do better in reading, in math skills. They find by developing this sense of themselves they can enjoy the subsequent school years more successfully.

I think anything we do to encourage the arts in the elementary program would be paid back many, many times over by the subsequent years of learning and the total mature development of the person in life either when they have to deal with their leisure time activities as well as their other responsibilites as mature adults.

Well, given all this, I don't know what I have written here, but what I have said is probably just as interesting as what I have written.

I think that if you will look at those points and try to keep those in mind in any subsequent funding proposals, at leisure stimulus in the federal level for the arts on the local level might discourge attempts by local boards of education to use the arts as the first to go and the last to come in terms of how they get funded and that we could hopefully anticipate a more enlightened cultural experience in the years ahead through the intervention of the arts as a major force for the improvement of the school program.

Those are not the comments I have written, but I do want to thank you for the opportunity to give expression to some of my concerns and feel confident that you will be able to digest this all after you read what I said, and not depend on how I said it.

Mr. FORD. Thank you very much.

Dr. Arthur Jefferson, General Superintendent of Schools, Detroit Public schools.

Your statement is in the record in full at this point.

Dr. Jefferson, you may add to it or summarize as you wish. [The statement referred to follows:]

TESTIMONY

of

Arthur Jefferson
General Superintendent of the
Detroit Public Schools

on

Title I

of the

Elementary and Secondary Education Act

before

the

United States House of Representatives
Subcommittee on Elementary, Secondary,
and Vocational Education

of the

Committee on Education and Labor

Wednesday, October 26, 1977

9:30 A.M.

Rayburn House Office Building, Room 2175

OUTLINE

I. Introduction

Historical Survey of Detroit's Effort

II. Legislative Elements which Enhance the Program

1. Forward Funding
2. Basic Skills
3. Economic Criteria
4. Administration
5. Allocation Process

III. Failures of Present Legislation

1. Level of Funding
2. Inflationary Effects
3. Non-Participants
4. Urban Impact
5. Funding Formula
6. Underachievement
7. Comparability
8. Regulations
9. State Monitoring

IV. Recommendations

1. Full Funding
2. Restoration of Part C
3. Funding Formula
4. Economic Factor
5. Comparability Data
6. Comparability Variance
7. Writing of Regulations
8. Publishing of Regulations
9. State Monitoring

The School District of the City of Detroit welcomes this opportunity to express its position on the reauthorization of the Elementary and Secondary Education Act. This position paper is offered in an attempt to recommend changes to Title I of the Act. These recommendations deal with the funding and allocation aspects, with the assessment of comparability, with the issuance of regulations and with program monitoring by state educational agencies.

There are many provisions in the act which have enhanced Title I programs. These will be listed so that their advantages can be illustrated. It is hoped that they will be retained in the new legislation. The present law, however, also contains a number of elements which have failed to achieve the goals intended for them. These failures are enumerated in a separate section.

The final section of this paper very specifically lists the recommendations offered for the new legislation. If these are adopted they too will enhance future Title I programs.

The charts attached are referenced throughout the text, yet they can be viewed independently since they tell their own story. Detroit's effort in compensatory education is surveyed in the brief historical introduction which follows.

Testimony of Arthur Jefferson
October 26, 1977

I. Introduction

For over a decade students of the Detroit Public Schools have benefited from special educational projects provided through the Elementary and Secondary Education Act of 1965. The funds allocated to the school district under this act have made it possible to provide new opportunities and launch a concentrated attack on the learning deficiencies of educationally disadvantaged children in Detroit. Thousands of such children located in great cities of this nation are now participating in compensatory education programs made possible by this act. By the end of this school year, commencement exercises across this nation will be held to award diplomas to thousands of our young people who were in kindergarten when ESEA legislation first became the law designed to launch a frontal attack on the poverty cycles which seemed destined to never relinquish their grasps on the same families, generation after generation. Yes, a mere twelve years of effort are beginning to produce some signs of hope that constant and concentrated effort can provide the centrifugal force required to thrust persons out of the deadly cycle of poverty into the mainstream of our economic system.

If compensatory programs are continued and exemplary strategies for learning are duplicated and expanded, it remains possible for many more thousands of children to emerge from the environments in which they otherwise will be forced to exist apart from the mainstream of the total community. The Detroit Public Schools have long embraced the concept that the Federal government must provide vast amounts of program money so that local school systems can meet the demand and right of all citizens to provide a quality educational experience for their children. These funds must continue to be directed especially to those areas of our country with large concentrations of children from poverty-impacted homes where parents are lacking the means (and sometimes the will) to provide sufficient educational opportunities.

The expansion and extension of the aims and objectives of the Elementary and Secondary Education Act can do much to improve our society. Not only have the educationally and economically deprived children of the Detroit Public Schools demonstrated consistent and increasing achievement toward national norms, but thousands of parents and interested adults have become meaningfully involved in the programmatic aspects of ESEA programs in the school district.

As far back as 1959, the district undertook modest experimental compensatory programs of its own. National leadership was assumed when in 1964, the Detroit Public Schools launched special programs funded under the Economic Opportunity Act. Such Community Action Programs as:

The School Community Project in Disadvantaged Areas (Great Cities Project--20 schools)

The Extended School Program (33 schools)

The Pre-School Child and Parent Education Program (10 sites)

The Assistant Attendance Officers Program

The Intra-Mural Physical Education Project (4 schools)

The Child Day Care Study Center (Planning Process)

were already initiated by Detroit's own leadership in 1964 in its effort to lead in what was called a Total Action Against Poverty (subsequently known as the Mayor's Committee for Human Resources Development). With the additional funds provided by EOA, such programs as:

School Health Coordinator

Project Head Start (for the child on the threshold of kindergarten)

School Volunteer Service

Project R.E.A.D. (Remedial Education for Adults)

In-School Youth Work Training (Sr. High)

Program Development

Developmental Career Guidance

were added to the massive action against poverty.

However, the key to the continued development of new and innovatively successful programs and the improvement, revision and expansion of existing ones was the advent of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. In the first year of funding under Title I of this act, the following programs were developed to be added to our front line operational strategies to improve the quality of education in Detroit:

Pre-School Child and Parent Education

Operation GO

Job Upgrading

Educational Television

Summer School

Outdoor Education and School Camping Experiences

Communication Skills Center

Basic Reading Demonstration

In-Service Training (Project F.A.S.T.)

Program to Continue Education of Girls who Must Leave School because of Pregnancy

Cultural Enrichment

In-School Youth Work Training (Junior High)

Discretionary Development Fund for Disadvantaged Schools

School Service Assistants

Program Dissemination

Program Evaluation

Yes, Detroit's involvement in ESEA had provided it with some of the means necessary to speak to a larger variety of needs which had then gone unmet. For example, teachers involved in providing much needed compensatory educational services to the most disadvantaged pupils received in-service training aimed at helping them meet much more effectively and efficiently the special needs of their students, and parents became involved in significant numbers as members of Project School Councils and as paraprofessionals. The effectiveness of these innovations has increased with the passing of time.

Mention shall be made here of some additional programs made possible in Detroit through other titles of ESEA. They are as follows:

ESEA, Title II

Library Books and Materials for local Schools
Professional Library

ESEA, Title III

Neighborhood Education Center

Language Arts-Mathematics Achievement Program in Four Elementary Schools

Computer Managed Instruction in Elementary Mathematics and Reading

Excellence in Science Project in Senior High School

ESEA, Title V

Decentralization Planning

ESEA, Title VI

Detroit's Multi-Faceted Special Education Project

Psycho Social Teams

Staff Recruitment Services

Pre-School Experiences for Special Children

Service to Pre-Schoolers with Language Disabilities

ESEA, Title VIII

Prevention of School Dropouts

Obviously, these additional programs, though small in scope, serve to provide some much needed services to children who need them most.

In Detroit, effort continues to see that the impact of compensatory education dollars, on the individual child, is not weakened by spreading these dollars over too many children. To help accomplish this, a formula has been designed to provide decreasing weight to census data for each successive year following the last census while providing a commensurate increasing weight to local data such as AFDC. This allows the "most needy" schools (economically) to be identified for the allocation of funds. A computer printout, listing pupils in decreasing order of need, as determined by a nationally accepted reading test program, allows the "most needy" (academically) pupils in these "most needy" schools to be identified as "priority pupils" for the receipt of Title I services. It should be noted here that local officials see no problem with this concept of disproportionate funding of pupils the satisfying of whose needs are characterized as "top priority" by this Title I process. However, there is a great long-standing concern for the inadequate levels of resources made available for use with educationally deprived students in the poorest attendance areas. This has been dramatized by the fact that, while total enrollment in the Detroit schools has declined 10.4% since 1974, the total number of poverty students residing in the district's attendance area has increased 10.7% (see Tables 1 and 2) Our records show that enrollment has dropped from 246,323 in 1974 to 222,638 pupils in 1977 while the number of pupils from low-income families (as defined for Title I) has increased from 46,404 to 51,373 during the same period. At the same time, the number of children actually served has remained virtually unchanged, after the reduction of 6,000 pupils at the beginning of the 1974-1975 school year. In spite of the fact that Title I funding increased from $19,075,202 in 1974 to $24,485,402 or 28 percent, the number of children who received Title I services remained close to 32,000. This phenomenon can be accounted for by the fact that total per capita expenditure, exclusive of categorical funds, rose from $952.52 in 1974 to $1303.28 in 1977, or 37 percent. In addition,

TABLE 1

Comparison of Pupils Enrolled and Pupils from Low-Income Families

Year	Number Pupils Enrolled*	Number Students from Low-Income Families**	Number Students with Title I Services
1973-1974	246,323	46,404	38,091
1974-1975	254,208	50,923	32,859
1975-1976	245,935	57,025	31,849
1976-1977	222,638	51,373	31,830

*Ninety-two percent of 4th Friday Count.

**Using the State formula.

TABLE 2

DETROIT PUBLIC SCHOOLS

Per Pupil Operating Expenditures

Year	Per Pupil Expenditures from Categorical Funds (1)	Per Pupil Expenditures Exclusive of Categorical Funds
1973-74	$163.08	$ 952.52
1974-75	193.53	1077.87
1975-76	197.95	1184.01
1976-77 (Est)	205.00	1303.28

(1) Categorical funds come from federal and state sources and are earmarked for special projects; they cannot be put into the general operating fund.

Source: Form B--Annual Financial Report

the Consumer Price index rose 42.8 percent during the period under discussion (Figure 2). The numbers of children served (see Table 1) indicate that Detroit has made a valiant effort to continue services to its disadvantaged pupils even in the face of the fact that increased Title I revenues purchased less and less with each passing year.

In summary, information and data we have prepared for your consideration indicate that ESEA, Title I has finally stopped the downward trend in reading, mathematics, and other academic achievement. In addition, the historically ever-widening achievement gap between the performance of academically deprived students and their counterparts as they continued in school from kindergarten upward has been checked or, in some cases narrowed. Hence, it appears incumbent on our federal government to redirect and recommit its economic and academic resources (in space-age fashion) to assume major responsibility for the conservation of our most precious resource--the human one.

II. Legislative Elements Which Enhance the Program

1. Forward Funding

The Education Amendments of 1974 continued many aspects and introduced some modifications to the Title I legislation which acted favorably on the intent of the program. Among these modifications was the concept of "forward funding" which, for the first time, made it possible for school districts to plan programs adequately and to begin program implementation at the start of the school year. Schools are no longer required to interrupt their regular schedule after the start of the year in order to begin planning and implementing remedial programs which were funded at the last moment. The concept of forward funding has filtered down to the state and county level creating an awareness among local officials that educational planning must be completed well in advance if that planning is to have its desired effect. For the 1977 and 1978 school years, the utilization of forward funding enabled the Detroit Public Schools to distribute school allocations in early spring. It is at this time of the year that teachers are most cognizant of the academic needs of the school population. Spring distribution of funds through forward funding permits enough planning time for new programs and for appropriate evaluations of the effectiveness of old programs. Forward funding also provides for continued hiring of special project staff.

2. Basic Skills

Another wise decision of the Congress was to retain the provision for the thrust of the Title I program to remediate basic skills for underachieving youngsters. There is no doubt that this provision, more than any other, will contribute to the aim of breaking the cycle of economic deprivation so rampant amongst the inhabitants of large cities. Communication and computing skills are the tools whereby our graduates may enter the job market in a successful fashion, and contribute to the productivity of this great nation.

3. Economic Criteria

Title I has been the bulwark of equal educational opportunity for our young. From the time of its inception in 1965, and through every extension and amendment, Title I legislation has aimed at the extension of educational opportunity for all children from the age of five to seventeen. The most likely locations lacking such opportunities are of course poverty impacted areas. Table 3, next page, illustrates the large percentage of underachievers in the twenty-four most poverty impacted areas of Detroit.

4. Administration

Present federal guidelines dealing with the administration of Title I funds and programs have helped the Detroit Public Schools to develop an accountability oriented

Table 3

DETROIT PUBLIC SCHOOLS

Comparison of Economic Conditions with Underachievement in Reading*

1975-1976

School	Poverty Index	Percent of Students Below Average in 4th Grade Iowa Test of Basic Skills
Couzens	43.41	40
Foster	41.66	57
George	37.30	22
Hancock	36.48	20
Crosman	35.84	45
Williams	35.80	19
Lincoln	35.16	20
Edmonson	34.43	39
Goldberg	33.97	34
Maybee	33.47	17
Kennedy	33.40	41
Thomas	32.19	50
Owen	31.83	35
Sanders	31.08	19
Chaney	30.82	40
Norvell	30.37	25
Wingert	34.96	21
Woodward	31.23	36
Trombly	31.33	44
Tendler	35.36	35
Keating	33.74	47
Bellevue	32.77	9
Scripps	32.32	28
Lillibridge	31.56	38

*Twenty-four District Schools with highest poverty indices.

management system extending down to local school buildings but directed by central office staff. Our school district is decentralized. Allocation and program decisions are made at the district, regional and local level with full accountability and available appropriate information as to the process used and their results. Parents Advisory Councils are consulted and made fully aware of the implementation of district policy and procedures as well as fulfilled commitments of administrators and teachers. Individual school projects are monitored in a prescribed manner by central office staff.

Besides the day-to-day management of Title I and the monitoring of implementation activities, central staff uses data processing methods to collect and maintain testing data for needs assessment and pupil selection, for making allocations to schools, and for tracking the participation of each student in individual Title I projects. In each of the district's regions, projects are coordinated by administrators who file monthly reports with central staff. These reports cover programmatic and fiscal information. Coordinators are expected to perform monitoring functions of Title I projects in the schools of their region on a regular basis. In this manner, Title I staff members at all levels become exceedingly knowledgeable about the requirements of the legislation and guidelines and projects are assured of compliance with the intent of the legislation. In that regard it must be stated that the inclusion of comments and responses together with the final regulations in the Federal Register has provided a better understanding of the regulations.

5. Allocation Process

The process that assures the attainment of the allocation goals of the federal program is another fundamental administrative aspect of Title I. Those goals are designed to target federal funds on students most in need of compensatory education services in areas of high concentrations of low income children. In order to adjust poverty ratios to current levels, the district uses a weighted ratio of 1970 census data and current AFDC data to determine a poverty index for each attendance area within the city. Local school allocations are based on poverty data, school enrollment and grade level, with priority being placed on lower elementary grades according to State Department of Education guidelines. Concentration of services is enforced by limiting schools to target population sizes which reflect the amount of money available to a given school. Thus, the administration of Title I projects in the district, both programmatic and fiscal, are facilitated by the present final regulations and guidelines.

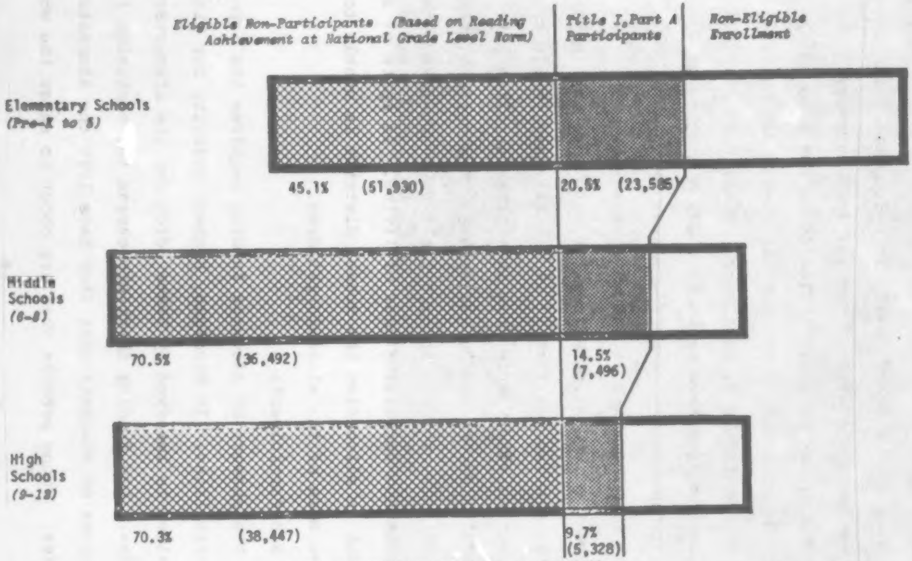
III. Failures of Present Legislation

1. Level of Funding

The provisions of the Elementary and Secondary Education Act focus on the needs of the economically and educationally disadvantaged children. Recent testimony by the director of the Compensatory Education Study undertaken by the National Institute of Education revealed that "Title I is far superior to other Federal or State funding programs in terms of its redistributive impact as well as its capacity to increase educational spending at the local level". Yet in the Title I schools of the central cities, there are large groups of eligible students who are being deprived of the services provided under the act. On the next page Figure 1, based on records of Detroit Public Schools Department of Research and Evaluation, illustrates graphically the large proportion of 126,869 eligible children that are not being served by the program in Detroit.

The level of funding as well as the formula applied to the distribution of funds are chief causes for this injustice. Amounts of funds allocated to local school districts reflect the level of funding appropriated by Congress. Title I is presently not even funded at the fifty percent level of its authorization. Anything less than full funding leaves large segments of underachieving children in schools receiving Title I dollars without necessary services.

Figure 1



Detroit Public Schools
Title I, Part A, Percent Non-Participants
1976 - 1977

(Total Eligible Non-Participants 126,869)

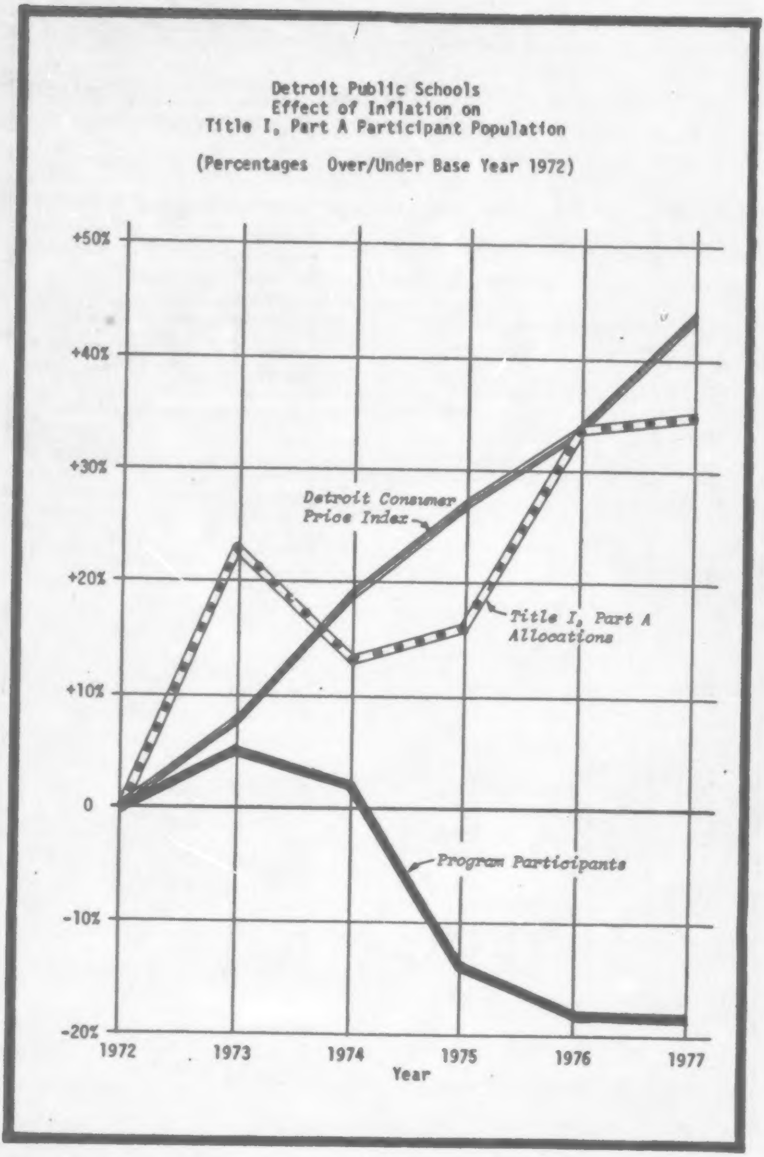
2. Inflationary Effects

Even at a reduced level of funding the Title I dollar has become the victim of the inflated currency. The effects of the monetary inflation on the size of the participant group in the Detroit Public Schools is illustrated on Figure 2, next page. While Part A allocations to the district have grown from $16.5 million to $22.5 million during the last five years, the consumer's price index has increased at a much faster rate. The rise in the cost of education allows for 5000 less participants in the program now than in 1972. All this, while the proportion of students from low-income families grow steadily (See Figure 3, next page). The current formula for allocating funds under Title I does not take into account the increasing cost of living. In spite of annual growth in allocation the school district is unable to serve more of the eligible children.

3. Non-Participants

The absence of adequate funding requires the imposition of priorities. In Michigan, highest priority for Title I services is reserved by State edict for the elementary grades. Low funding therefore causes the exclusion from programs of students once they have left the elementary grades. Young persons that are about to enter the world of

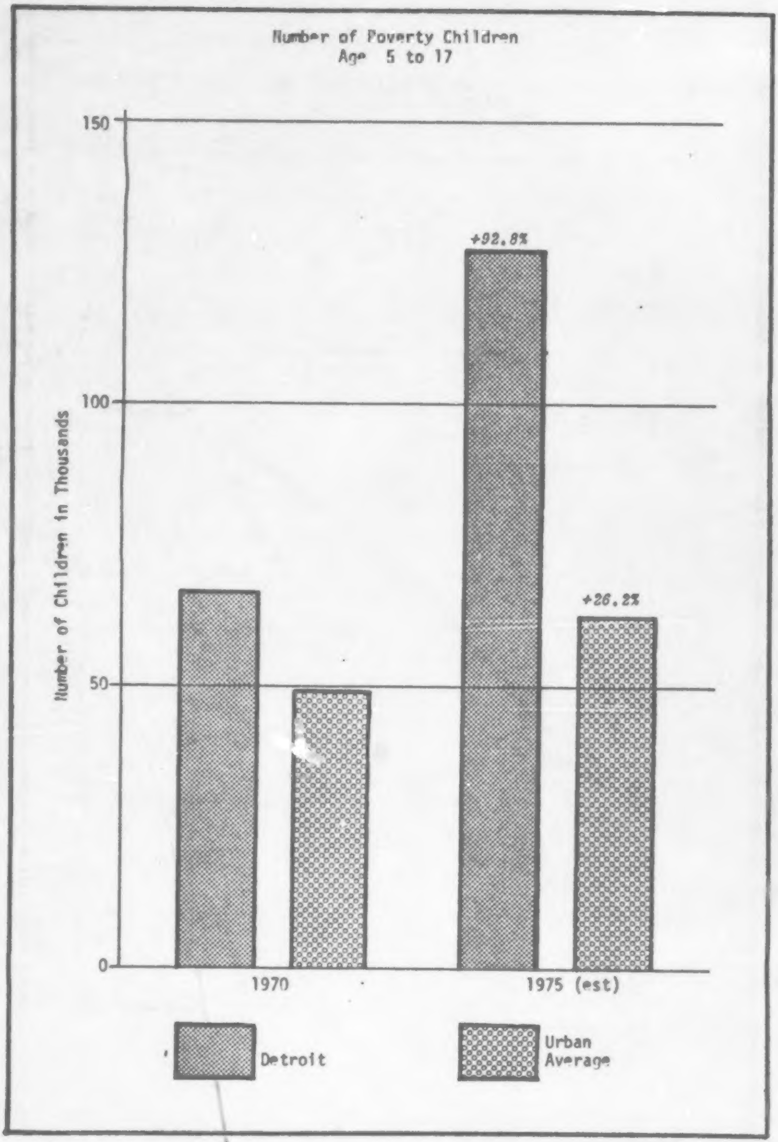
Figure 2



Detroit Public Schools
Effect of Inflation on
Title I, Part A Participant Population

(Percentages Over/Under Base Year 1972)

Figure 3


Number of Poverty Children
Age 5 to 17
150
100
50
0
Number of Children in Thousands
+92.8%
+26.2%
1970
1975 (est)
Detroit
Urban Average

adulthood must be given the opportunity to do so with confidence. For them, confidence is inspired by the acquisition of the basic skills of reading and arithmetic. Yet in Detroit, Title I serves thirty-one (31) percent of eligible Title I students at the elementary level, but only seventeen (17) percent of the middle school students, and twelve (12) percent of the eligible high school population. The low level of funding prevents the district from serving more students.

4. Urban Impact

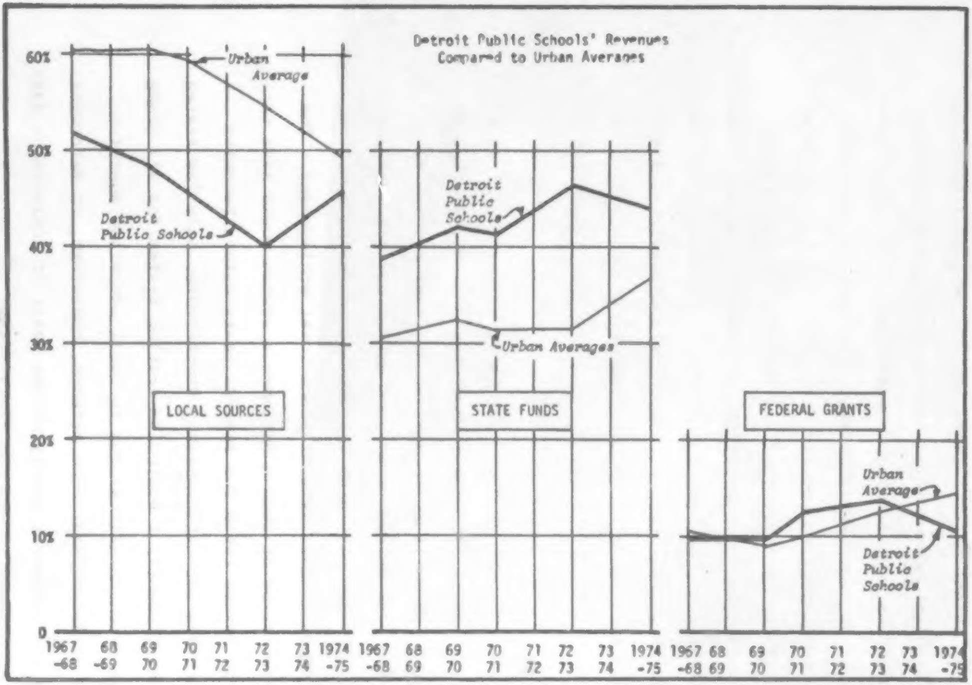
Urban areas, with their high concentration of disadvantaged, also have excessively large groups of underachieving youngsters. To overcome the impact of poverty on the achievement level of school children in the central cities, it is not sufficient to simply provide for the remediation of basic skills. Additional effort must be exerted against various root causes that prevail in such areas. The level of funding there should reflect the need for these additional services.

5. Funding Formula

The funding formula used to determine allocations to states was devised several years ago and did not fully contemplate the effect of an ascending poverty line by which the AFDC children are to be counted. The method used ignores the presence of large numbers of children from homes receiving aid for dependent children. These children are not counted towards the allocation of Title I dollars. Yet they exist, and the great and ever increasing disparity in the formula withholds from the areas in which they reside the necessary means by which they should be served. Since the AFDC count in large cities is appreciably higher than that of rural or suburban areas, city school districts suffer most from this inequity. Detroit especially is fast falling below urban averages for the proportion of federal funds in its total revenue. This is shown in Figure 4, next page, which is based on information provided by the National Conference of State Legislatures in its publication "Big City Schools: 1970-1975".

6. Underachievement

The Title I program is seen by some as the catch-all for underachieving youngsters. Highest need is often interpreted in terms of achievement rather than a combination of economic and educational factors. The legal provisions for the determination of eligible target areas on the basis of poverty data clearly spell out the intent of the original drafters of this legislation that need shall be determined not only on the basis of achievement but on the basis of equal educational opportunity. Any attempt to change the


Detroit Public Schools' Revenues
Compared to Urban Averages
60%
50%
40%
30%
20%
10%
0
Urban Average
Detroit Public Schools
LOCAL SOURCES
Detroit Public Schools
Urban Averages
STATE FUNDS
FEDERAL GRANTS
Urban Average
Detroit Public Schools
1967 -68
68 -69
69 70
70 71
71 72
72 73
73 74
1974 -75
1967 -68
68 69
69 70
70 71
71 72
72 73
73 74
1974 -75
1967 -68
68 69
69 70
70 71
71 72
72 73
73 74
1974 -75

original intent of this legislation from providing educational opportunities to that of general aid by offering the benefits of this program merely on the basis of underachievement must be discouraged. As long as there are children in this nation's schools that are doubly disadvantaged, by both economic and educational factors, high need cannot be determined on the basis of only an educational factor. We must continue to concentrate our efforts on the plight of those students whose educational disadvantage is compounded by the lack of economic means. A dilution of funds amongst various types of underachieving youngsters must not be allowed to occur.

Even in the advent of full funding, with sufficient funds allegedly to serve most of the educationally needy children, there is at present no national testing program that could be uniformly applied throughout all sections of the country, by which allocations to states could be determined on the basis of educational achievement. The implementation of such a nationwide system would have to undergo severe tests for several years before becoming practicable for utilization. Furthermore, only few states possess presently a statewide testing system for all grade levels by which allocations to local education agencies could be determined. The attempt, therefore, to determine Title I allocations purely on the basis of achievement data, must be stopped by the new legislation.

7. Comparability

Another aspect of present legislation which, on the surface, seems to support the concept of the supplementary nature of Title I services, actually detracts from the effectiveness of such services. School districts are required to assess on an annual basis the fact that services rendered by their local and state funds in project schools are at least equivalent to those rendered in non-project schools. This annual comparability study requires the listing of every instructional employee in every building of the district, the determination of how these services are proportioned among local and federal funding, and the amount of base salary received by each such employee.

There are two determinants used for establishing comparability: a pupil-teacher ratio and a ratio of instructional salary per pupil. Project schools may vary from the average of non-project schools by a factor of five percent. Harsh consequences are mandated for a school district that fails to establish comparability by a given date. The requirement of the legislation to assure the non-supplanting of local and state funds is just and should be pursued with vigor by the enforcement agencies. However, since the assessment of comparability only illustrates the picture for one particular day of the school year, a much simpler method should be established.

The Detroit Public Schools underwent a period of court ordered desegregation during 1975-1976. Consequently, a considerable shift of personnel and services was encountered. The comparability count at the beginning of the 1976-1977 school year required the services of three administrators and eight secretaries for a period of three weeks. In addition, one of the three school administrators and two Michigan Department of Education auditors spent several days in auditing the report. Data processing services used to establish the comparability in some three hundred buildings, each with a multiplicity of various special funding, amounted to several hundred hours. In terms of dollars it is estimated that the annual comparability study costs in excess of $50,000. Surely these funds could be applied better in providing direct instructional services to children, such as the hiring of three additional teachers for an entire year. A way must be found to simplify the reporting of comparability data particularly for large city schools and especially when a district is implementing a desegregation plan.

8. Regulations

The final regulations published on September 28, 1976 in the Federal Register appear comprehensible to professional staff and parents. Further effort needs to be made to simplify their language and clarify references used throughout. Unfortunately the process of publishing final regulations is too slow for an ongoing program such as Title I. With the passage of the Education Amendments of 1974, state and local offices made every effort to familiarize local schools and parents with the new aspects of the law. In those areas where there was no clear statement, staff and parents began to select their own interpretation. With the issuance of the final regulations, two years after passage, staff and parents were required to adjust their application of the law. This process is still going on. For, as is well known to educators, unlearning is a more difficult process than learning.

The recent attempt lauhched by Vice President Mondale to allow teachers to have a voice in the formulation of the law is a worthwhile consideration also for the issuance of regulations. Project administrators have not been given enough opportunity in the past to offer comments and act as consultants. These administrators are more familiar with the day-to-day activities of the program than are the Office of Education officials who formulate the regulations.

9. State Monitoring

One more aspect of concern in the present legislation deals with the role of the State Educational Agency in its monitoring function. Experience has shown that there is a wide variance among states in the amount of indirect unrestricted cost allowance given to school districts. It seems that for large school districts the amounts vary from two to eight percent. The lack of uniformity for districts finding themselves in very similar circumstances is rather alarming. A sharing of information between state departments of education seems to be lacking.

IV. Recommendations

Failures in the present legislation can be remediated. For this reason the following recommendations are suggested to the Congress for consideration:

1. Funding for Title I should be at the maximum level of its authorization. If this cannot be achieved in the first year of this legislation, then an increase of not less than one billion dollars should be provided. A phasing process could be used to increase funds annually so that

each year additional schools and grades within schools could begin to benefit from Title I services and programs.

2. The funding formerly known as Part C should be reinstated. This funding should be provided for areas whose impact of poverty exceeds that of the average of the state.

3. The Orchansky index of poverty and the formula by which it is applied should be corrected so that the effects of inflation on the poverty cut-off of AFDC children include all such children in the count. This would result in the inclusion of all poverty children within a district in the determination of that district's allocation.

4. The allocation formula shall continue to use economic disadvantagement as the sole factor. Determination of where Title I services are to be rendered shall also be made on the basis of poverty factors. Achievement data shall be used solely to determine the individual child that is to participate in the program.

5. Comparability reporting shall be discontinued on a building by building basis. Instead a carefully verified random sampling of both project and non-project buildings in the school district, selected by an outside agency, shall be used for the study.

6. The date for the filing of the comparability report with the State educational agency shall be changed from December 1 to January 1. This will allow large school districts more ample time to make an accurate assessment of its comparability.

7. Congress shall mandate input by local Title I administrators in the writing of rules and regulations.

8. The new legislation shall require the publication of final regulations at a specified time which allows for appropriate formulation but also assures early implementation of changes in the law.

9. Annual surveys shall be conducted and their results widely distributed which would list planning, implementation, monitoring and evaluation practices of State educational agencies.

STATEMENT OF ARTHUR JEFFERSON, GENERAL SUPERINTENDENT, DETROIT PUBLIC SCHOOLS

Dr. **Jefferson**. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Arthur Jefferson, General Superintendent of the Detroit Public Schools. On behalf of the 234,000 students of our school system, I certainly welcome this opportunity to come before this committee to testify on the reauthorization of Title I of the Elementary and Secondary Education Act.

My presentation, my oral presentation this morning, will relate primarily to the administration of Title I. In particular, I would like to share a few brief comments that will deal specifically with the published regulations and program monitoring, as well as the provisions for comparability, nonsupplanting and the maintenance of it.

I appreciate, Mr. Chairman, that my full written testimony will be a part of the record which deals in more detail with what I will be dealing with in my oral presentation.

Before moving into a specific discussion of some of the topics that I would like to share this morning, I would like to present some general observations about the Title I program.

First of all, I wish to state for the record that Title I programs have been of tremendous importance for low achieving students in the Detroit public school system. Thousands of our students have improved their reading and mathematic skills as a direct result of their participation in Title I programs.

Many of these students, I dare say, who were in kindergarten when the Title I program was first enacted, will be graduating from our high school during the course of this school year.

Many of those students probably would not be in that position if it had not been for the support of the Title I programs which enable school districts like mine to develop the kind of educational programs to speak to some of their very pressing needs.

I must point out however while there are many success stories with those students we are able to serve with Title I dollars, it would be a very serious mistake for this committee to believe that school districts are presently able to serve all of their educationally disadvantaged students.

I am not only talking about my school district, but I also suggest that that is true in many other large urban school districts that face similar problems as mine.

Although Detroit receives a larger Title I allocation today than ever before in our history, the fact is these funds allow us to serve only a fraction of the students who require compensatory edcation services. Specifially, we have about 126,000 students who are eligible to receive Title I services.

We currently are servicing about 32,000 students, to show you dramatically the sharp differences as between those who are eligible and those who we are currently able to serve.

There are several important reasons for this decrease in services.

First of all, the increase in the Title I allocation has not kept pace with the increase in the cost of living. In Detroit, the Consumer Price index has risen 43 percent, from 1972 to 1977.

During this same period, the Title I part A allocation has incresed only 35 percent. Since the number of projected participants depend upon the cost of education, that number has not been incresed over this period of time. In fact, we are forced to serve 5,000 fewer students today than we did in 1972.

Assuming that the number of economically disadvantaged youth remain the same, the incresed Title I revenues purchase less and less with each passing year. Unless that trend is stopped, we can see that continuing to be a problem in school districts like mine and many others throughout this country.

Unfortunately, this problem is compounded by the fact that the number of disadvantaged students has been steadily increasing. Our total enrollment, for example, in the Detroit schools has declined by 10.4 percent since 1974.

The total number of disadvantaged students residing in the district's attendance area has increased by 10.7 percent. Specifically, our records show that enrollment has dropped by 20,000 from 1974 to 1977, while the number of pupils from low income families as defined by Title I has increased by 5,000 during that same period.

I emphasize, Mr. Chairman, and members of the committee, that I believe Congress must agree to appropriate its maximum authorization for Title I funding.

I respectfully submit that it is only through full funding that Detroit and other large urban areas will be able to provide compensatory services to all of the economically disadvantaged students who require such services in order to acquire the educational and life skills they need in order to enter the mainstream of society.

I would also like to point out, Mr. Chairman, and members of the committee, that in addition to the need for full funding the irony of the present situation is that while the number of children from AFDC families is steadily rising in Detroit, the formula used to allocate funds counts fewer and fewer of these children.

The funding formerly used to determine allocations to states was devised, as you know, several years ago, and did not fully anticipate the effort of an ascending poverty line by which the AFDC children are to be counted.

The method used ignores the presence of large numbers of childen from homes receiving aid for dependent children. These children are not counted towards allocation of Title I dollars, yet they exist, and the greater and ever-increasing disparity in the formula withholds the funds from those areas which have the greatest need.

I strongly urge Congress to modify this allocation formula so that all AFDC children are counted to determine entitlement.

My final comment on the funding formula has to do with the feasibility of using achievement data rather than economic data.

I wish to state for the record that I fully support the conclusion of a recent NIE study which states that, 'Our conclusion of feasibility leads to the conclusion that it is not possible to allocate funds to states based on achievement test scores.'

I personally share NIE's concern about the lack of any currently existing nationwide testing program. I would only hasten to add that while at the present time Congress I believe should not switch to an achievement based formula, Detroit stands ready to assist in any further studies which will gather additional data regarding the feasibility of formula funding which includes achievement data.

I would now like to turn my attention to the administration of the Title I program.

I personally consider the Federal guidelines for the implementation of the program to be both generally adequate and workable. I believe that for the most part the rules and regulations are clear and concise, and provide the flexibility which is necessary to allow the different needs which exist among states.

The only suggestion I would make regarding the rules and regulations has to do with those few regulations which in the language is slightly ambiguous. As an example, I cite Section 16-41, part C of the final Title I rules and regulations appearing in the Federal Register of September 28, 1976.

That regulation deals with the relationship of Title I projects to state compensatory projects. The language is not in my judgment specific enough to provide adequate guidance in practical situations where state and federal projects exist side by side.

This is particularly true in states like the State of Michigan where there is also a state compensatory program. They should not run in contradiction to each other, but they should run in complement to each other.

Sometimes, particularly in that section, there is a sense of ambiguity that I hope will be cleared up.

I also suggest that a systematic procedure be worked out which allows for representation from school districts to have direct face to face input into the development of the rules and regulations.

I believe that this type of input from the practitioners may serve to avoid those few ambiguities which presently exist in the rules and regulations.

With regard to the assessment of comparability, I want to stress the fact that Detroit is fully committed to the importance and the need for providing fair services to all students. I must confess, however, that along with other major cities I would hope that the reporting procedures for comparability could be simplified.

The date for the filing of the report may be changed, for example, from December 1 to January 1, thus allowing more time to complete the report. I would further suggest that in place of a building by building count, that larger school districts would probably be just as well served if a count was based on a random sampling of buildings, and we could still achieve the same goal that I think none of us would disagree on in terms of the whole notion of comparability.

Although I support the need for reporting comparability, I would welcome any modification in the procedures which would simplify the task. I might say parenthetically, that in terms of staff time and energy, it has cost us on the average between $50,000 to $60,000 each year to comply with that comparability report, and not to speak of the other kinds of disruptions within the educational program.

But, I am saying I think it is necessary, but I do believe that we can simplify the process and yet still achieve the same goal.

I am very happy to report to this committee that Detroit enjoys an excellent, I believe, relationship with the State Department of

Education in Michigan, with regard to frequent interaction and cooperation that we have with our state department.

While we do not always agree on all of the interpretations of Title I rules and regulations, we have been able to resolve our differences in our judgment in a very fair manner.

In closing, Mr. Chairman, and members of the committee, I urge the members of this committee to give careful consideration to the underlying basis for this very vast educational funding program.

The economic factors that are titled in it are the foundation upon which it rests. The goal of educators throughout this country I believe to provide quality education to all groups of students cannot be fully realized without the assistance of increasing amounts of Federal dollars.

We find ourselves in a situation in many urban school districts, which I am sure that members of this committee are fully aware of, that, notwithstanding the declining enrollment, the problems of urban school districts are increasingly mounting in terms of the characteristics of the population that is increasingly residing in urban areas.

If we, as a nation, are to solve these problems, we not only have to continue to expect assistance in resources at the local and state level, but we must also continue to expect assistance from the Federal level.

Mr. Chairman, thank you again for this opportunity to present these very brief statements to you, and I would be pleased, as I am sure my colleagues would be, to respond to any questions that you may have.

Mr. FORD. Thank you very much, Dr. Jefferson.

Before we proceed to questions, I would like to comment, that, we from Michigan, are very proud of the job that you have been performing in Detroit. The most recent evidence of the confidence that the people of that community have in your stewardship was the passage of additional millage by some 60 percent of the vote. This happened at the same time people all across this country have been saying no to school administrators who have asked for additional effort at the local level to support education. We were pleasantly surprised—those of us who were observers of your recent millage election in Detroit.

When one considers the kind of economic conditions that have existed in Detroit in recent years—the very high levels of unemployment that continue in that city, and the clear evidence of a major depression for the area that has been with us for some time—it is something short of a miracle that citizens under those circumstances are willing to increase their own local taxes by a substantial amount at this time in order to support public education.

I think this is the highest compliment to you and to your staff.

We here in Washington rely very heavily on some of the people that you have with you here today. We have come to depend on the people of your staff for the knowledge that comes to those of us in Michigan about the special problems of being a very large school district encompassed in and coterminous with a very large city.

Dr. Crew, you came on strongly for the concept of following the child with Title I funds. I think that Dr. Jefferson is saying almost the same thing, except that he says identifying the child who will be the target of the program within a school should be done by means other than the economic statistics that we now use.

Dr. **Crew**. I understood you to be suggesting something much more broad than that. Did I understand you to say that the present system of requiring you to designate target schools interferes with the proper use of Title I funds in a city like Baltimore?

Dr. **Crew**. No, Mr. Chairman, I did not address specifically the following of a child. I dealt with the difficulty in comparability, such as in my district we gather the material during the month of October. We find that problems of mobility in terms of teacher turnover and mobility among pupils causes us to make changes.

Last year, for example, we had to make several redistributions of aide hours and transfer in the middle of the year I think fifty-five teachers.

Now, if we had been allowed to, say, establish comparability projections at the end of June and make these changes in September—someone else mentioned the January date. So I dealt with the change of that reporting date of comparbility.

However, I have some thoughts on the matter of Title I benefits following the children. I think they should. We are fortunate in not having the kind of problem that Detroit has in transporting masses of youngsters because of a desegregation plan. But where that happens, I think there would be a substantial number of students in some school that did not qualify and those services that they were once declared eligible in some other part of the city for should follow them.

So I am positive on that notion also of having the Title I benefits follow the pupils.

Mr. **Ford**. Would you care to comment on that, Dr. Jefferson?

Dr. **Jefferson**. Yes. Mr. Chairman and members of the committee, the point I was trying to make is that I would gernerally be supportive of the concept of Title I services following the child, if, however, there was full funding of the Title I appropriations.

You see, we find ourselves with a situation where even under the present rules and regulations we cannot even service all of the eligible Title I youngsters. And if you compound that by the fact that kids are moving, mobility within a district, you would run into problems, I think, that would be educationally detrimental, in the sense that you would not have the concentration to provide the kind of adequate services.

So the concept, yes, I would support, if there were enough dollars, so that we could be in a position of fairly providing the services for all eligible Title I kids.

Mr. **Ford**. In your statement, you indicated that your method of determining the target population and attendance areas is to use a weighted formula consisting of 1970 census data and current AFDC counts, although in distributing funds to you we only take a very small part of the current AFDC into account. Is that correct? Is that all that you use in determining the target schools?

Dr. **Jefferson**. Well, for Title I purposes in Detroit, Mr. Chairman, you are correct that the poverty index is a weighted factor, which combines the census poverty percentage with the AFDC poverty percentage.

For example, in 1977-78 65 percent of the census factor is combined with about 35 percent of the AFDC factor, resulting in our city having a weighted average to determine eligibility of about 17.9 percent. That means that an estimated 17.9 percent of all Detroit families are considered to be on a poverty standard as far as Title I is concerned. That excludes a large number of youngsters who are receiving AFDC. Yet we just cannot, with the resources we have, afford to service them.

Mr. Ford. The census data you are talking about is the application of the Orshansky formula to what the 1970 census indicated by census tracts in Detroit was the location of children aged 5 to 17 in that income bracket.

Dr. Jefferson. Yes. I believe that is so, sir.

Mr. Ford. How relevant are those figures to the real world in 1977 in Detroit and to that part of the formula? Are the high concentration of low-income families still in the same place in Detroit, and in the same proportions as they were in 1977?

Dr. Jefferson. No. I think you are familiar with Detroit. At one time, in the seventies, the northwest section of Detroit, what we call our Region 4, there was a very, very low percentge of poverty level families. That has shifted dramatically in the last seven years. So there is that increasing mobility within our city from moving from the core of the city, for example, to the outer fringes of the city. And it creates some problems.

Mr. Ford. You say the formula is weighted. How much of the formula is based on census data and how much on current AFDC count?

Dr. Jefferson. I think I am correct, Mr. Chairman, that about 65 percent is based on the census data and about 35 percent on the AFDC.

Mr. Ford. Is that a requirement of the Michigan Title I program, or is that a local decision?

Dr. Jefferson. It is a local decision, and is not a requirement of the state, as I understand it.

Mr. Ford. Now, when you count the AFDC children, do you count the children on the basis of the school they are actually attending, or the basis of the school attendance area that they live in?

Dr. Jefferson. It is the attendance area.

Mr. Ford. So that both the census data and the AFDC data could conceivably not relate to the place that the child actually goes to school, since you have had the transportation of students under the court order.

Dr. Jefferson. That is true.

Mr. Ford. To meet the basic purpose of the desegregation order, a child living in a statistically high concentration of poverty presumably would be transported to a school that did not have a similar concentration.

Dr. Jefferson. That is correct.

Mr. Ford. And this child might thereby be transported out of the Title I program, correct?

Dr. Jefferson. That is correct. And it has created a particular problem with those schools. We have several examples of that in those schools that are part of the busing plan.

Mr. **Quie**. Would the gentleman yield? I have heard—and it may not be correct—the census information is secured on the residence area and AFDC data on the attendance area.

Mr. **Ford**. No. That is on the residence area also.

Mr. **Quie**. I thought you said AFDC was on the attendance area.

Dr. **Jefferson**. It is my understanding that it is the general geographic area, not only the attendance area. It is not exclusively the local school attendance area.

Mr. **Quie**. In other words, you have to bus in Detroit. You take an area around a particular school. You use the census information and the AFDC information, in that area around that school, whether those students attend that school or not.

Dr. **Jefferson**. That is correct.

Mr. **Quie**. Let me ask one other question along that line if I may. You criticize the fact that in the formula we have the escalating Orshansky each year, and you only take AFDC above that. In your determinations do you only count AFDC above current Orshansky or do you take all of the AFDC in making your count there?

Dr. **Jefferson**. I think we take all, Mr. Quie.

Mr. **Ford**. Michigan is one of the nineteen states that provides additional Title I type funds from state resources. In Michigan, this state supported compensatory education program is referred to as Chapter 3.

How does the distribution of Chapter 3 money within Detroit correspond with the distribution of your Title I money in Detroit? Is it fair to assume that they are for the same basic purpose?

Dr. **Jefferson**. Yes, it is fair to assume they are for the same basic purpose. It is also fair to assume in many instances for those schools that are eligible, Title I schools, and identifiably targeted Title I students who attend those schools, in many instances they are also Chapter 3 youngsters as well, or identifiable Chapter 3.

As you know, Mr. Chairman, I am sure, the state compensatory program is based on an educational criterion rather than an economic criterion. And there is obviously in the literature—most educators recognize the great correlation between economic and educational attainment.

So to answer your question, generally speaking in X school that is a Title I school, targeted Title I, identifiable youngster, in many instances he will also be a Chapter 3 youngster as well, in the state compensatory program.

Mr. **Ford**. On your Table 3 you list the 24 district schools in Detroit with the highest poverty indicators. Then for each one, you give a poverty index, which presumably is the figure one arrives at by using the combination of census and AFDC. Then you show to the right of that a column indicating the percentage of students below average in what I believe is the Fourth Grade Iowa Test of Basic Skills.

Am I correct? Is it the Fourth Grade Iowa Test of Basic Skills that is used to distribute the Chapter 3 money?

Dr. **Jefferson**. No. The State of Michigan has a state assessment for grades four through seven they utilize for distribution of targeting Chapter 3 children. However, the Iowa Test—I don't mean to say Iowa is a national test, but we administer it in the fourth grade as well. The correlation between the state assessment test results and the Iowa standardized test results is pretty close.

Mr. **Ford**. When one looks at the twenty-four most impoverished school districts under the Title I formula, they range from the Bellevue School with 9 percent of the students below grade average on the Iowa Test of Basic Skills to 57 percent at the Foster School. The Foster School shows a poverty index of 41.66 and the Bellevue School shows a poverty index of 32.77. There is quite a substantial disparity between what the skills testing is showing you to be the need in that school and what the census and AFDC data is telling you ought to be happening.

I take it that is what you mean when you say that there is a general correlation but it does not always hold true.

Dr. **Jefferson**. That is right.

Mr. **Ford**. What other factors should we be considering in looking at that chart to explain that kind of disparity?

Dr. **Jefferson**. Well, one other factor is from an educational point of view—I know specificaly of the programs operationally in the Bellevue School, but I have less specific knowledge offhand about the operation of the Foster School.

At the Bellevue School we have been working rather intensively, and when I say we it is primarily the principal, the staff members of that school, have been working rather intensively over the last several years,and notwithstanding their heavy poverty index they have I think made some remarkable achievement efforts with those students.

It only points out, Mr. Chairman, the fact that we have some success stories. Some other schools have much further to go in relationship to achieving the ultimate objective.

Mr. **Ford**. That success does not cost the school Chapter 3 funds, does it?

Dr. **Jefferson**. Well——

Mr. **Ford**. In other words, the fact that they are showing success as measures in the ratio of children scoring below the national average to the ratio of poverty children——

Dr. **Jefferson**. I don't have the figures before me in terms of the fourth grade state assessment for that school. But it probably does cost them some funds.

Once students achieve the norm or above they are no longer eligible for Chapter 3 funds. I don't have the specific data before me. My guess would be, if I would look on a longitudinal basis for the last couple of years, probably that school has received less state compensatory funds.

Mr. **Ford**. You have detailed the number of working hours and the number of people and the tremendous cost involved in developing your report to show comparability each year. You draw the conclusion that you think the money would better be used for direct instruction of children.

Are the criteria that you have to develop for showing comparability relevant in a school system like Detroit? Does the report really tell you very much about whether you have somebody's idea of true comparability by taking into account salaries and weighting those the same as teacher-pupil ratios?

Dr. **Jefferson**. Mr. Chairman, as I tried to indicate in my oral testimony, I firmly believe that the comparability process could be simplified. I just think the large urban school districts like mine, and I am sure Baltimore has a similar situation, you just cannot apply in my judgment the general rules that they have now to large urban school districts.

I think we could simplify the process.

As I suggest, one may weigh the random sampling, and we could still get a pretty good gauge of the comparability, whether or not we are providing equity of services.

To answer your question, frankly, if there was one major area in the current rules and regulations I think needs to be seriously looked at, it is that, because larger school districts—I am convinced we could achieve the objectives in giving the local school district first of all, and any other reporting agency, the state and then Federal level, an indication of whether or not we are not using the funds illegally without having to do that, because the changes occur so frequently that once you collect the data even it is not necessarily an accurate reflection tomorrow of what the situation was last week.

Mr. **Ford**. Dr. Crew, how do you determine the target schools in the city of Baltimore?

Dr. **Crew**. We use census data and the school lunch count. At one point we had a private firm in Maryland that the State Department consulted with and used that data. It was pretty close to ours. But to update it, we went back to the census data, to modify it—I have forgotten the year—and take a 50-50 average of it, and then go to test groups.

Mr. **Ford**. So fifty percent of the formula is based on the application of the Orshansky level of poverty, plus the number of AFDC children in families above the Orshansky?

Dr. **Crew**. We don't use the AFDC. We do get applications each year from parents about the reduced price in the free lunch program, and they are pretty reliable for us. The submission has been pretty good. So that is what we use.

Four or five years ago we tried a weighted kind of thing with the census plus the study we had made by the firm, which tried to modify the census data, plus the free lunch—and it didn't net us anything other than what we have right now.

As a result of this, we find that from year to year—last year I think we had three schools changing out of the seventy-something schools, in the relative ranking. And the communities have accepted this, once we have explained it.

A few years ago there were some arguments, "Did you change the criteria on us? My school was eligible this year." And of course the three-year phase-out period helped us, too.

At a maximum, I think we might have had ten schools changing moreso years ago than what we have this year. We only have three schools.

Mr. **Ford**. We heard about this phenomenon from cities like Atlanta the last time around.

Mr. Quie points out by the figures you have 75 schools and 74 of them are designated as target schools.

Dr. **Crew**. We are serving that many. Over and beyond that we have some eligible we are not serving. I think we went up from 71 to 74 last year, schools we were actually serving.

Mr. **Ford**. I am interested in how you use the parents' response to the inquiry about free or reduced priced school lunches. Is your program concentrated in elementary schools?

Dr. **Crew**. Mostly.

Mr. **Ford**. Do all of your elementary schools have a school lunch program?

Dr. **Crew**. For the most part, yes.

Mr. **Ford**. The children in each and every one of the elementary schools participate in the program, so that your census is a complete census of the city if you are taking it from that application.

Dr. **Crew**. That is right.

Mr. **Ford**. What do you take from the application? Do you count the number of children who qualify for the free lunch, or do you take the income data?

Dr. **Crew**. The income data. It is in categories, as I recall it—so many in the family, the income level. So we take the combination based upon income that would qualify you. I remember one year it was $5,000, and if you had four children it was something else. But we submit that application to everybody in the city, all the families.

Mr. **Ford**. Once you have used the schoollunch application to determine the concentration of low-income children in a school, is it used in any other way to affect the admission to the programs or anything of that kind?

Dr. **Crew**. No. It qualifies them for the free lunch, a reduced lunch. But it also gives us another index in that particular school, as to what the relative poverty level is.

Mr. **Ford**. Mr. Quie.

Mr. **Quie**. Dr. Jefferson, to go back to that table again, you make the point that the poverty index and low achievement kind of correlate with each other. If you look at the Goldberg School with 33.97 percent in poverty and 34 percent are low achievers, according to the Iowa Test, then I would say that would be correct. But look at Thomas, where there are 32.19% in the poverty index and 50 percent low achievement. Bellevue has 32.77% poverty nd 9 percent low achievers. I would say it does not fit very well.

How do you divide the money between each of those schools?

Take Thomas, Goldberg and Bellevue. Do you have the figures with you on how you divide the money?

Dr. **Jefferson**. Representative Quie, first of all I should explain that the poverty index figure, the way in which we compute it, we use census data as well as AFDC data, to get a city-wide average. Any school that is above that average—in this case for this school year it is 17.9. So all of these schools listed here would be above that and therefore would be eligible.

Then once that standard is met, then we look at the enrollment of each individual school to determine the number of youngsters within that school that meet the economic criteria of coming from a family that meets the Federal guidelines to determine the exact number of students within that particular school that would be eligible.

You take, for example, the Couzens School, where the poverty index is 43.41 percent, by and large it would mean that that school would have a large number of youngsters who would be Title I eligible.

Mr. **Quie**. Do you determine that on a set amount per poverty child? I recognize that if one school had 500 and the other one 250, if they had the same percentage, you would have twice as many in the 500 school as in the 250. Would that mean that if they were the same percentage of poverty, one would get twice as much money as the other?

Dr. **Jefferson**. No. As I recall, once the school has been determined eligible, and once the number of youngsters within a school, say 250 or 500, within that school, then they all get the same amount of money per child.

Mr. **Quie**. Per child. So that means that in Bellevue School, with only 9 percent underachievers, it receives a huge amount of money per underachieving child. In the Thomas School, where you have 50 percent underachievers with about the same amount of poor, you would have less than the average amount.

Dr. **Jefferson**. Yes. Again, the critical factor—the second column of that chart only speaks to the educational attainment of the students, which is a criterion that we do not use currently as far as Title I is concerned. So you are correct that, to give an example, if there were the same number of youngsters in the Bellevue School as, say, in the Couzens School, 250, yes, the Bellevue School would get more Title I dollars.

Mr. **Quie**. If there were the same amount of children in each school, therefore the percentage of poverty is about the same, and therefore the same dollars. One has to be divided among fifty percent low achievers, and the other nine percent low achievers, which may account for the Decima study which indicated that 52 percent of all the children in Title I programs are not underachievers, which is an extremely high percentage.

I would assume, then, in the Bellevue School they either have to really pour it on that nine percent, or else include a number of others as well who are not actually underachievers. That leads me to believe that within the school district using poverty to distribute the money is about the worst way possible to distribute the money. Once the money gets to the school, you don't base it on poverty any more. As Dr. Crew indicated, to determine eligibility of individual students for the program, you don't look at their family's income at all. You base that entirely on achievement. Isn't that correct?

Dr. **Jefferson**. Well, as I indicated, Representative Quie, I don't have at this moment any viewpoint in regard to the Federal level utilizing other criteria, namely educational criteria.

I would, however, sugget that I think there would be some real problems unless we had some nationwide standard, which we currently do not have, so there would be equity across the country.

Mr. **Quie**. I recognize the problem that you raise and other people raise, too, because we don't have those figures across the country—nobody has done that test, we don't know how that would then be divided actually among the states. We can only be guessing. I recognize that problem.

I would like to approach it rather at the local school district level. It seems to me that you in Detroit ought to have the opportunity to divide that money among the underachievers as you see best. Right now you are using AFDC, which is very inaccurate, in fact HEW says it is less accurate than census information. That must have been the year the census information was derived, because by the time we finish using the 1970 census information based on 1969 income, everybody will have left school by then. So I cannot accept that being accurate compared to anything.

The AFDC is very inaccurate as well. I recognize the problems even within the state. Many of the states are not like Michigan—where they don't have similar achievement data amongst all the school districts. I recognize even the problem there.

Let me ask each of you, how would you react if just within the school district you were able to use achievement or poverty or a combination of both?

Dr. **Jefferson**. Well, I certainly would be glad to lead off the response, Representative Quie and members of the committee.

Basically, philosophically, I believe very firmly in as much flexibility at the local level as possible in terms of meeting the needs. I think that the primary decisions about the utilization—we have the kids, we can determine, I think as accurately as anybody else, perhaps even better, how to effectively utilize the funds to meet the educational needs.

So philosophically I have no objection to that at all.

Mr. **Quie**. Dr. Crew.

Dr. **Crew**. Mr. Quie, I guess we like what we are doing. We established the eligibility of the school by the number of children meeting the guidelines on the dual criteria. And then we establish those eligibles somewhere in the guidelines where we used standardized tests, and the child normally shows educational deprivation.

If I understand you, if you had a sound measurement program where you say regardless of your income that you are two years below or a year below, I think this would get back to the funding, of how many can you serve and how far.

So basically I must state that since we have had rather satisfactory results, I rather like establishing the poverty level as the basis for the school to qualify, and then take the standardized test scores to say which youngsters should be served.

Mr. **Quie**. You are saying we ought to stay with the poverty figures to determine which school ought to be served.

Dr. **Crew**. The concentration of low income families.

Mr. **Quie**. How about the amount of money that goes to each school? I would warrant in Baltimore you would have the same situation as Detroit. School attendance areas may have the same percentage of poor children, but they may vary as great as between Thomas and Bellevue, which was nine percent underachievers and fifty percent.

Now, let me ask you about the money.

Dr. **Crew**. We provide an amount of services in relatively small elementary schools, where we have not had a tremendous problem. I know in some instances where they say they have poor children, "Why don't you serve them?" But the way we averaged out and took a mean—I have forgotten the technique—it is fairly consistent.

If I understand your question, the amount of money to go purely on a poverty basis I think would spread the monies we have away from the desolate areas whre the schools are 90 percent qualified.

Mr. QUIE. No. You picked the eligible schools. How do you divide the money?

Dr. CREW. How do we divide the money?

Mr. QUIE. Yes. Strictly on poverty?

Dr. CREW. No, we divide it on the number of children in those schools who are below some educational level.

Mr. QUIE. So you divide the money by achievement?

Dr. CREW. Yes.

Mr. QUIE. So then you really have the same thing, except that those school districts that are at the poverty level do not get any money?

Dr. CREW. That is correct.

Mr. QUIE. It has 500 children. You could say it is 250 children. Another school has 28 percent target children but has 500 children. You have practically twice as many poor children but it does not get any money. How can that be?

Dr. CREW. I see what you are saying.

Mr. QUIE. If you have 50 in one school and 20 in another school, it seems to me you should not cut out the 50 because the 20 happen to be the higher percentage of the total. Then we have the agreement Jefferson had in here, that 28 percent had 50 percent low achievers in the school and the 30 percent had 9 percent low achievers in the school, the 9 percent gets the money based on the poor kids rather than the low achievers, the 28 percent does not get a cent.

Dr. CREW. Most schools, elementary schools, have pupil rankings where you do not have great diversity in the size of 143 elementary schools—I may be wrong on one or two but I am sure that the high percentage of concentration is in terms of numbers and poverty in those schools.

Mr. QUIE. Some cities or districts have elementary schools of more uniform size than others. One thing we do know, that the percentage of low achievers in schools does vary dramatically, as indicated by Detroit. For some reason or other, people do not get upset if they do not get money, if they never got it in the first place. The only people who get upset are the ones who have money taken away from them. When you move a school out of Title I, you find that happens.

Dr. CREW. Yes.

Mr. QUIE. I found in Charlotte-Mecklenburg, when they did their distribution based on achievement, people were not very unhappy. Principals and parents came in and said they accepted it because it was fair, because there had been shifts in population, so where one community that was an affluent area because of desegregation had changed in the area of number of poor children but they were not a Title I school at all. My own feeling, as the states develop competency to distribute money based on achievement, they ought to be able to do that.

Mr. **Ford**. I think what Dr. Crew is getting close to, and what I was trying to get at, is that there is another element involved. Dr. Jefferson said he is philosophically in favor of the maximum possible flexibility at the local level. In the real world that presents no problems if we were dealing with 50 percent funding, or roughly 50 percent funding, of what we recognize in the authorizing legislation as the level of funding that would be necessary to serve the population that Title I is supposed to be reaching.

If we were to give you more flexibility at the local level to determine which schools you are going to spend the money on, would it become a community problem for you?

Dr. **Jefferson**. That is a very good point, Mr. Chairman. It certainly does. It would create some local community problems. In my general statement about giving maximum flexibility I should have prefaced that, funding so we could reach all those youngsters.

Mr. **Ford**. If a citizen were asking the same questions of you and your staff that Mr. Quie has been asking, the answer you have now is: Well, the feds would not let us do that; the feds tell us we have to distribute it in this fashion, and that solves a problem of community unrest for you, does it not? When we give you the flexibility beyond that, we also give you exposure to people trying to throw their weight around city hall, do we not?

Dr. **Jefferson**. You have stated it very nicely.

Mr. **Ford**. I am familiar with the very special situation you have in Detroit since the Michigan Legislature gave you the opportunity to have the regional school districts within your district. You have a pattern, I am pleased to say nobody else in the country looks like they are going to copy because of something less than great success.

The senator wanted to say something.

Mr. **Faxon**. I wanted to respond in part to the question Mr. Quie raised, that is, the reason for the poverty initially was because there is a relationship between performance and poverty. When you get into people in testing with regard to middle-class children, the problems of low performance are no longer attributable to the poverty factor. You are less in control over the nature of the problem as it initially started and where it was created. You see, in many cases the schools are not necessarily the most basic factor in the child's eduction, and children will learn in spite of whether the schools are necessarily great because of motivational factors and influences that operate outside the schools that are supportive of eductional values and achievement.

In the case of poverty areas, however, the absence of those experiences on the outside of a school makes the school far more important for the potential success factor of the children, so that where the intervention is given to poverty, you are looking at a much more objective criterion than if you looked at the very subjective nature of testing in general and what it is you are testing for and how accurate and reflective the tests are to the extent they are used. They are used as comparable measurements, but if you address poverty you know you are going to achieve some success with children who would not otherwise have opportunities.

If you address other factors, you are dealing with a much more nebulous area and the impact may not be what you anticipate because you are actually dealing with factors that are not within the control of the schools to manipulate.

Mr. **Quie**. You are saying it is really easier to make an impact on a poor underachiever than a non-poor underachiever?

Mr. **Faxon**. That is right.

Mr. **Quie**. I have been making that point for a long time because if you are equally an underachiever and non-poor, then all of those inputs did not do the good it is supposed to have done and they are really worse off than the person who is poor in that argument.

When we are dealing with this, however, what strikes me is that we seem to think a non-poor and a poor are two terribly different people. If we look at poor over against high income, then it would be. But what bothers me if a family get just a few dollars over poverty it isn't counted in the formula. Mr. Ford has talked about this many times, to live in New York City certainly costs differently than living in a city in Arkansas. In New York City, if you are a thousand dollars over the poverty factor it does not mean you then have made substantial input in your child's life; that he is going to be an achiever because of that. That is why the whole poverty thing bothers me so much, that we are under the assumption this is an accurate indicator of all of the people who are underachievers and therefore need compensatory education.

I have seen the results among non-poor underachievers that are dramatic, as well as through Title I programs. Let me just cite a few of the figures that stand out in my mind. Forty-three and a half percent of the poor are low achievers but 33 percent of the low achievers are poor. Fifty-two percent of the Title I recipients are not low achievers, those who are participating now in the Title I program. Only 35 percent of those who participate in Title I are poor.

Mr. **Faxon**. Are the achievers measured on the basis of the standardized test on national exam or state wide?

Mr. **Quie**. They use the 1-year under grade level. There are different ways of doing it.

The interesting thing is, in order to get the same number of people who are poor and non-poor amongst the low achievers, you have to call everybody 150 percent above poverty as poor and then you get about a 50-50 ratio. The mix is about 33 pecent of underachievers are poor and 65 or 67 percent are non-poor. You would have to go to 200 percent of poverty and then call everybody poor below that. You would then get about 65 percent of the low achievers as poor and 35 percent of the low achieves as non-poor. It also indicates there are a large number of people, lower middle-class or near poor who are not being counted now, who have a substantial underachieving problem that Title I could help.

I am interested in the census information which becomes more and more obsolete so that in the last year it is is used nobody is in school who was counted originally or AFDC, which varies so dramatically by community and state, or else the third one, those who benefit from the school lunch program. In one of the regulations you use the free lunch; in the other part of the regulations you use reduced-cost lunches, where children are eligible at about 195 percent of the poverty level. This indicates to me that Baltimore thinks that free and reduced cost lunches—or are you dealing with just free lunches in Baltimore?

Dr. **Crew**. Excuse me.

Mr. **Quie**. Do you think free lunches are more accurate than AFDC, because you do not use AFDC? You use the census information and free lunches. Detroit evidently feels AFDC is more accurate than free lunches. Other communities use all the factors, so there is a combination throughout. I think it would be helpful if people would figure out, if we are going to use poverty, which of the three is the most accurate. We know the census information is the most accurate in the year it is taken.

Mr. **Faxon**. But it is outdated. In a city like Detroit the population, declining schools, have been thousands each year, the city has declined in the past eight years by a couple hundred thousand people.

Mr. **Quie**. When using the update of the census, the two extreme states, Alabama loses 48 percent when you update it by 5 years; Nevada increases by 54 percent. So if we go to achievement, people are going to gain or lose; districts and states are going to lose and gain, dramatically using the poverty formula we are using presently. If you go to all AFDC, it is even more dramatic. If you go to free lunches, we do not know because nobody has figured it out on that one.

Mr. **Peagler**. In the case of Detroit?

Mr. **Ford**. It becomes even more Kafkaesque, if possible, when you recognized that the 1970 Census data is based on 1969 employment, which probably was never been higher since World War II than it was in 1969. The 200,000 people who have left Detroit have not, for the most part, been unemployed people. The percentage of low-income people to total population has been on the increase while the total number of children in schools has been on the decrease. The Orshansky formula escalates each year and theoretically bears a larger portion of the people who were unemployed in Detroit in 1969 because the Orshansky formula saying—I think now $6,000 for a family of four—is that about where it is?

Mr. **Quie**. Yes. $5569.

Mr. **Ford**. The $5500 level for a family of four is considered poor, but you go back and apply that to statistics that were developed in 1969, and the only people you would have been measuring in 1969 in Detroit would haver been the unemployed heads of households who may or may not be any longer in Detroit, if they did not succeed in getting their jobs.

In 1969, the unemployment on the Eastside of Detroit was probably as low as it ever has been. Recent figures indicate we have census tracts now with as much as 45 or 50 percent unemployment. That condition has existed for some five years. It is not likely to change very much. I am tending to move into the direction Mr. Quie has been trying to bring us in, because it seems to me the census data is almost totally irrelevant in 1977 with a city with the dynamics of Detroit. I have a strong suspicion what is at work in Detroit is at work in other major cities across the country.

People who are moving to the Sun Belt, and going to Texas, looking for jobs are not the people who have been one of the most serious problems for your school district. As a matter of fact, there is some evidence that heads of households are even looking for employment in other areas and leaving behind a family that statistically was not poor in 1969 and therefore was not measured, but very clearly is presently, and has been for some time in that situation.

The chronic unemployment that we dealt with in the seventies was not really taken into account in the sixties when we wrote these formulas. We were talking about hard core unemployment and we used that arbitrary $2,000 figure. Everyone recognized that had no relationship to the real question of poverty. It was an arbitrary figure that was dictated primarily because those of us who attacked the formula. Former Congressman James G. O'Hara from Michigan and I spent a good deal of time tying up the bill because of our unhappiness with the formula. Finally we were convinced there was no real alternative because we did not have the data we needed.

We were forced to use 1960 census data. Then we were sort of lulled into a feeling this would improve because we were going to computerize the 1970 census data.

If we analyze the factors that have come into play—the utilization of the 1970 census data, the removal of AFDC children, and the hold harmless amendment adopted in 1974, under which some of the nation's most impoverished communities are now receiving their Title I allotments—we discover that the $400 milion increase suggested by the Administration does not go to districts with high concentrations of low income children. When Secretary Califano made this recommendation, I am sure he sincerely believed that the increased funding would uniformly find its way into these high concentration areas.

That is, when you measure what happens to the great cities, as contrasted with other types of school districts, you find that $400 million has a very thin trickle and that it tends to go, as past funds have gone, in an overwhelming way toward parts of the country where low wage rates are still the pattern.

Orshansky itself has never appealed to me as having any relevance to urban poverty. It is the craziest measure that I have ever seen. Ms. Orshansky told this committee, when we met with her back in 1974, that she would not recommend using it because it was a very imperfect measure that was designed for an entirely different purpose. What we hear now from people like those on this panel, as it was very well expressed by Senator Faxon, is because we used the poverty index for so long, that the Title I program has an identity in peoples' minds as something that starts off as a poverty program and ultimately ends up as an education program, if by force of coincidence the money gets to the right place.

I understand that you gentlemen may be attending a meeting with the great cities in the very near future. I do not think the testimony on behalf of that organization addresses this problem very thoroughly, and I think the committee would be very interested in finding out what their reaction would be to go like this.

Suppose they were posed the following question: In whatever form the poverty formula is finally devised, should that formula be used to distribute funds among the states and thereafter the state be given an option as to whether it was going to use the federal formula. Or should the states be able to choose between that formula in combination with some other factor, which could include testing, to make its distribution within the state? Finally, with respect to the money when it gets to the local education agency by whatever approach, should we pull the strings off and let the local education agency determine how the resources will be allocated within their own school district?

What I've outlined is a pretty bold departure that would have triggered some knee-jerk reactions from people like me a year ago when Mr. Quie was first talking about it. But it is no longer so bold to think along those lines, and I think the big city school district people ought to give us some of their wisdom in terms of whether or not that type of approach would be progress. That, of course, is bearing in mind the caveat that the ability to get much more than the additional $400 million given this year is very questionable.

On the other hand, you are always faced with the question of when you broaden the constituency of a federal program so a greter percentage of the population believes that the distribution is fair from their point of view, do you also broaden the support for the ultimate goal of full funding?

It would be a trade-off when one looks down the road of what the level of Federal legislation is going to be. If we continue with the status quo, will we really see very much public support for massive infusions of additional dollars given the present state of the program? Or are we going to have to make some changes in order to encourage that public support for increased dollars?

I have talked before with people from Detroit on the question of Follow the Child, which I raised a few minutes ago. The first time they came back at me, I was a little shocked, but I think I understand it now, when they said: Yes, that is the ideal solution to our problem, but not unless you give us an awful lot more money than you are giving us. We would have to spread our money around so thinly, the people we are serving are not going to be served with the quality of the program we are now offering in the limited number of locations we are able to provide the program.

I think if you could help us, the committee might be able to develop a funding mechanism that would promote the idea of using Title I as a device to obtain much more in the way of Federal support for education.

As I view it, however, people from the big cities are not now forcibly making a case for that kind of expansion. Perhaps we spend too much time here just fighting to retain current funding levels and the tendency is we better take what we have and not mess with it too much because we might lose something. I guess my complaint is that I do not see any bold leadership for the future of Federal funding coming from either state capitols or big city administrations. It is an observation of what we have heard during all of these hearings. The NEA has thrown another little bombshell at us in suggesting whatever formula we devise should go directly to local educators. I do not know how much support that is going to get, but it is an idea that is not being immediately rejected by a lot of people who might not have supported that idea in the past.

When we wrote the Elementary and Secondary Education Act, it was in the very shadow of the passage of the Civil Rights Act of 1964. In fact, it predated the passage of the voting rights legislation of '65. I, for one, am prepared to believe that something has changed in this country in the ensuing years, and that the kind of suspicion that motivated us to write restraints and restrictions on local administrators into the law from the beginning isn't necessary any more. We discussed it further in 1967 or 1968 and made even tougher restriction. Then we came up with the concept of comparability and that was clearly a reaction, to some rather startling things some cities had done. Chicago was the most noteworthy. The chairman of the subcommittee was from Chicago and was aware of what happened and he was largely responsible for tightening the law so that abuse would not continue. We concentrated our attention on the Southern states, but at the same time we did not realize in the Sixties there were still many Northern cities that were not yet prepared politically and otherwise to deal fairly with all of their student population.

There is not any question at all, as we try to take the strings off many of these categorical programs down to and including the local level, there will be groups in society who will suggest that this is going to be an invitation for abuse patterned on past history. I think we would like to hear your appraisal of whether or not there has been a change across this country that would justify a relaxation of some of these restraints that are now placed. Please do this recognizing the point I raised, that you are asking for local problems when we give you more discretion. Because then you are on the hotseat in deciding where the resources are going to be applied. We still have scars left from the efforts that were made during the poverty program years which led to local devices regarding allocations.

In Head Start program, for example, a concentration of programs in the same places that statistics said Head Start should have been in 1964. There has been absolutely no recognition of the fact that populations have moved and changed in this country since they started. We discover that the new Head Start money that we thought was going to be moving into the areas, where change had taken place under the formula change in 1975, in fact, has not. In Michigan we are particularly upset to discover we have been losing $6 million a year in Head Start funds because the Office of Child and Family Services has ignored the 1975 amendment in the law and has not distributed the money by that formula. This has resulted in the loss to a number of states of funds they have received, by keeping them in a status quo position. I am afraid that Title I is developing into a similar institutional status quo type of program because of the restraints we have put on it.

What I am trying to convey are some of the concerns the committee has about how we approach the form this legislation is going to take for the next 10 years since it would appear that is its generational life.

We would like very much to have this record stay open for another month to have the comments from you gentlemen and from the organizations to which you belong, on the potential for that kind of change.

I want to thank each and every one of you for your contribution to the record of these hearings. It is the chairman's intention, as I understand it, to divide the very voluminous record that is being developed into separate volumes based on subject matter. Thus there will be one individual volume containing Title I testimony.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 9:35 a.m., Thursday, October 27, 1977.]

PART 18: ADMINISTRATION OF TITLE I OF ESEA

FRIDAY, OCTOBER 28, 1977

House of Representatives,
Subcommittee on Elementary, Secondary and
Vocational Education,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in Room 2175, Rayburn House Office Building, the Hon. Carl D. Perkins (chairman of the subcommittee) presiding.

Members present: Representatives Perkins, Mottl and Kildee.

Staff present: John F. Jennings, majority counsel; Christopher Cross, minority senior education consultant; Nancy L. Kober, staff assistant.

Chairman Perkins. The subcommittee will come to order.

The Subcommittee on Elementary, Secondary and Vocational Education is conducting hearings this week on the administration of Title I of the Elementary and Secondary Education Act.

The subject of our hearing today will be state compensatory education programs and their relationship to Title I.

According to the National Institute of Education, 17 states are currently funding their own compensatory education programs. In fiscal year 1976 states allocated over $364 million for these programs.

Today we have representatives from two states with compensatory programs, along with Mr. Robert Silverstein, Lawyers' Committee for Civil Rights Under Law, who directed a study for the National Institute of Education which addressed the relationship between Title I and state compensatory programs.

We are delighted to welcome here today a distinguished panel of witnesses: Dr. Robert O. Greer, Assistant Superintendent of Public Instruction, Ohio Department of Education; Mr. Richard Boyd, Washington State Department of Education; Mr. Bill Whiteneck, Deputy Superintendent for Administration, California State Department of Education; and Mr. Robert Silverstein, Director, Legal Standards Project, Lawyers' Committee for Civil Rights Under Law, accompanied by David Long.

Let me ask all of you to come around. We will hear all of you as a panel before we question you.

PANEL OF ROBERT O. GREER, ASSISTANT SUPERINTENDENT OF PUBLIC INSTRUCTION, OHIO DEPARTMENT OF EDUCATION; BILL WHITENECK, DEPUTY SUPERINTENDENT FOR ADMINISTRATION, CALIFORNIA STATE DEPARTMENT OF EDUCATION; ROBERT SILVERSTEIN, DIRECTOR, LEGAL STANDARDS PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, ACCOMPANIED BY DAVID LONG

Chairman Perkins. At this time I want to call on my distinguished colleague, Mr. Mottl, for some remarks.

Mr. Mottl. Thank you very much, Mr. Chairman.

I would just like to join with the Chair, as a member of the Subcommittee on Elementary, Secondary and Vocational Education to give a warm welcome to our distinguished colleague from Ohio, Robert Greer.

Dr. Greer has had a distinguished career in education. He has served Ohio so well. It is a great pleasure for me to add, along with the Chair, a warm welcome to our distinguished educator from Ohio.

We look forward to your excellent statement. Just keep up the good work in Ohio. Welcome aboard, Dr. Greer.

Mr. Greer. Thank you, sir.

Mr. Mottl. Thank you, Mr. Chairman.

Chairman Perkins. Let me welcome you here, Dr. Greer. We are always delighted to hear from the great State of Ohio. Mr. Mottl is doing a wonderful job representing you. Go ahead in your own way.

Without objection, all prepared statements will be inserted in the record.

STATEMENT OF ROBERT O. GREER

[The statement referred to follows:]

TESTIMONY

by

Robert O. Greer
Assistant Superintendent of Public Instruction
Ohio Department of Education

Before the House Education Subcommittee
on Elementary, Secondary, and Vocational Education

October 28, 1977

Mr. Chairman and members of the Subcommittee, my name is Robert O. Greer. I am Assistant Superintendent of Public Instruction, Ohio Department of Education.

I am pleased to have the opportunity to speak to you concerning the relationship of the state funded compensatory education program and Title I of the Elementary and Secondary Education Act.

Before describing the relationship of the two programs, I would like to begin by providing a brief description of the state funded compensatory education program.

There are two components of the state program: one, known as the Disadvantaged Pupil Program Funds (DPPF) and the other, Disadvantaged Pupil Impact Aid (DPIA) program.

In 1967, the Ohio General Assembly recognized a long-standing need in Ohio public school education by enacting the DPPF program. Section 3317.024(f) of the Ohio Revised Code reads as follows:

> An amount for each eligible school district for the improvement of the educational and cultural status of disadvantaged pupils, to be determined by the State Board of Education, but not to exceed an annual amount equal to two hundred dollars times the number of children ages five through seventeen residing in school districts whose parents were receiving aid to dependent children during the month of January preceding the start of the fiscal year. No school district shall receive funds pursuant to this provision unless the State Board of Education has approved a program designed and submitted by the school district. No school district shall receive funds pursuant to this provision

unless the district includes fifty residents between five and seventeen years of age whose parents are receiving aid to dependent children, or includes a number of residents equal to five per cent of the average daily membership of the school districts as reported pursuant to Section 3317.03 of the Revised Code, or both. The State Board of Education shall adopt rules and regulations implementing this subsidy.

The legislative intent was to provide state categorical aid to enable eligible public school districts to develop and implement special programs for educationally and culturally disadvantaged children in our large urban centers in Ohio.

It was determined that Disadvantaged Pupil Program Funds were to be used for any child in any Title I qualified building in a school district. Children with the greatest needs were to be given first consideration. These may or may not be children eligible for AFDC monies, but should be children who exhibit the greatest academic, cultural, emotional, or health needs. The number of children ages five through seventeen whose parents receive AFDC were to be used only as a factor to compute the amount of the grant to each school district. Programs should never be labeled or identified as AFDC programs.

Mr. Chairman, I believe it is important for the Committee to understand the standards by which the DPPF program operates. They are presented in written form as follows:

A. Criteria for Approval

In reviewing DPPF program proposals, the Department of Education shall use the following criteria:

1. Programs shall be conducted only in school buildings which qualify for participation in Title I of the Elementary and Secondary Education Act.
2. Programs shall be designed specifically around broad educational goals to serve the needs of disadvantaged pupils, including but not limited to --
   a. Academic achievement and remedial programs
   b. Adaptation of curriculum, instructional methods and materials
   c. Cultural enrichment experiences
   d. Dropout prevention
   e. Home-school and adult education programs
   f. Improvement of communication skills
   g. Improvement of health and related services
   h. Improvement of library services
   i. Motivational and self-imagery development
   j. Safety and building security
3. Activities, methodology or personnel needed to implement the ten major programmatic headings may include, where feasible --
   a. Use of counselors
   b. Use of paraprofessionals
   c. Teacher and staff preservice and inservice training
   d. Take-home learning kits
   e. Improvement of pupil-teacher ratio
   f. Special tutoring
   g. Camp, farm, or environmental education
   h. Special classes for disruptive pupils
   i. Executive teacher plan
   j. Use of security guards

4. The program shall be economically feasible and efficient.
5. The program shall serve the needs of highest priority among the target group of pupils.
6. The procedures to be used in achieving the program objectives shall be appropriate, adequate and efficient.
7. Adequate evidence shall be submitted that the proposed program will supplement the regular school program.
8. The means for evaluation shall be appropriately built into each program. Written evaluation of each program shall be submitted to the Department of Education within forty-five (45) days following the close of the program.

B. Accounting and Reporting

Monies spent for implementation of approved programs shall be accounted for in the same manner as other local and state funds, with provision for separate budgeting and accounting to establish and verify the funds expended for this purpose.

1. A fiscal report shall be filed with the State Department of Education no later than November 15 following the close of the fiscal year. The report shall include the following information:
   a. The amount approved for the program
   b. The total of all funds received for the program during the fiscal year
   c. The amount of all expenditures incurred during the fiscal year
   d. Outstanding unliquidated commitments
   e. Balance of state funds on hand

2. Funds approved for the program shall be allotted to the district on a monthly basis, based on estimated expenses.

The funding history is shown in the following chart:

The implementation of Senate Bill 350, passed by the 107th General Assembly in 1967, began in January of 1968. The per pupil allocation for the remaining half of fiscal year 1968 was set at $42.00 per eligible AFDC pupil. The first full year of funding in fiscal 1969 reflected double the earlier amount for $84.00 per eligible AFDC pupil. The chart below reveals the per pupil funding levels for January, 1968 through fiscal 1977.

Table I

Fiscal Year	Per Pupil Allocation	Number of Eligible Districts
Jan. 1968-June 1968	42.00	131
1968 - 1969	84.00	131
1969 - 1970	150.00	129
1970 - 1971	175.00	131
1971 - 1972	5/12 of 175 7/12 of 200	259
1972 - 1973	155.00	326
1973 - 1974	142.00	384
1974 - 1975	138.75	403
1975 - 1976	129.90	421
1976 - 1977	127.50	454

Mr. Chairman, the following chart reflects how the funds were distributed to the major cities of Ohio for fiscal year 1977:

Table 2

City	Amount FY 1977
Cleveland	$ 6,693,622.50
Columbus	3,416,617.50
Cincinnati	2,747,497.50
Dayton	1,896,562.50
Toledo	1,632,892.50
Akron	1,426,215.00
Youngstown	737,587.50
Canton	429,037.50
Springfield	400,350.00
East Cleveland	398,565.00
Lorain	278,077.50
Hamilton	270,682.50
Warren	259,207.50
Middletown	241,995.00
Lima	238,425.00
Mansfield	201,322.50
TOTAL	$21,268,657.50

Sixteen cities received 65.8% of the total annual allocation of $32,337.278. This represented 3.5% of the 454 districts eligible. The remaining amount, $11,068,620.50 was spread over 438 districts. Heaviest funding below the $200,000 range went to suburban school districts.

While DPPF funds are restricted to Title I schools, the second component of the state compensatory education program, DPIA, is used for general expenditure purposes.

DPIA funds were designed to primarily assist the major cities. Section 3317.024(G) of the Revised Code reads as follows:

> An amount for eligible school districts for a disadvantaged pupil impacted aid program. Each school district in which the number of children ages five to seventeen residing in the school district who were receiving aid to dependent children during the month of January preceding the start of the fiscal year is at least five hundred or is equal to ten percent or more of the pupils in average daily membership for the fiscal year shall receive a payment, free from categorical restrictions, computed in accordance with the following schedule: (See Appendix A)

The formula used in distribution of Fiscal Year 1978 funds is shown in Appendix A. A chart showing the distribution of DPIA funds to Ohio major cities is shown in Appendix B.

It is hoped that this brief description of the mechanics of the two components of the state compensatory education program will illustrate the compatibility with the existing Title I legislation.

The Ohio legislature, in creating the DPPF program, agreed with the Congress on the importance of concentrating services on those students who have the greatest educational needs and attend school in areas of high economic deprivation. The Ohio Department of Education believes strongly in the concept of categorical aid for both Title I and DPPF. Thus, the state compensatory (DPPF) funds are restricted to only those buildings that are eligible for Title I services.

In general, the two funds are coordinated into one program at the school district level with each one complimenting the other. In many districts, Title I funds provide the supplementary reading and math instruction while the DPPF funds are used to provide the supportive services such as counseling, health services, social services, etc. In other districts, the two funds are used to provide the same academic instructional program, either in different buildings or at different grade ranges. (See Appendix C).

In Ohio during fiscal year 1977, only 44% of the eligible students could be served by Title I because of the funding level. Eligible students are defined as those students who live in eligible attendance areas and score at or below the thirty-third percentile on a standardized achievement test. The State Compensatory Education funds helped to supplement these programs.

The two programs are not in competition for the same students but rather are operating as one cooperative coordinated effort to bring the most service possible to those students most educationally disadvantaged. The success of Title I in Ohio was demonstrated in fiscal year 1976 when 65% of the children enrolled in the Title I reading program achieved at least one month of growth for each month enrolled. In the Title I mathematics program, 67% of the children achieved at least one month of growth for each month enrolled.

I would urge this Committee to keep the Title I provision the same as they are now, which allows us to continue the same kind of concentrated educational service to those educationally disadvantaged students most in need of help.

8—9

APPENDIX A

Formula for FY 1977-1978

Percentage of Total Average Daily Membership	Allotment of State Aid Per Pupil In Total Average Daily Membership Minus One-Half Of The Kindergarten Average Daily Membership
Less Than 10%, But More Than 500 A.D.C. Children	$ 7.50
At Least 10% But Less Than 14.5%	$ 7.50
At Least 14.5% But Less Than 18.5%	$24.50
At Least 18.5% But Less Than 22.0%	$36.00
At Least 22.0% But Less Than 26.5%	$47.50
At Least 26.5% But Less Than 31.5%	$54.00
At Least 31.5% But Less Than 38.5%	$67.50
38.5% Or More	$80.50

If as a result of changes in average daily membership or the per cent of children receiving aid to dependent children the appropriation to fund this division is less than the sum of the payments computed under this division, the amount paid to each school district for the fiscal year shall be the amount calculated under this division times the quotient obtained by dividing the amount appropriated for payments under this division by the sum of the payments computed under this division.

APPENDIX B

Disadvantaged Pupil Impact Aid Major Fiscal Distribution For Fiscal 1977-1978:

CITY	AMOUNT FY 1978
Cleveland	$8,996,680.00
Columbus	4,804,353.00
Cincinnati	4,019,480.00
Toledo	2,460,880.00
Dayton	2,392,402.50
Akron	2,109,190.00
Youngstown	1,023,705.00
East Cleveland	571,050.00
Canton	562,986.00
Springfield	485,298.00
Lima	388,098.75
Lorain	362,146.75
Hamilton	287,875.00
Middletown	276,997.00
Warren	271,962.25
Mansfield	212,549.75

APPENDIX C

The following programs are examples of how Title I-ESEA funds and the State Compensatory Education funds are coordinated at the local educational agency level. The same administrators and supervisors usually handle both programs.

- In Columbus, Ohio, Title I provides the supplementary reading and math instruction at the elementary level. The state compensatory funds are used to provide supportive services such as, counseling, home-school coordination, parent aides, etc. At the junior high and senior high level, the state compensatory funds provide both the supplementary reading and math instruction and the supportive services.
- In Cincinnati, Ohio, Title I funds provide a supplementary reading program at the elementary schools while the state compensatory funds provide the supplementary reading instruction at grades seven through twelve plus the supportive health and dental care at all grade levels.
- The Dayton City Schools provide a concentrated individualized supplementary reading program at the elementary level. Title I funds the program in as many qualified buildings as possible and the state compensatory funds are used to operate the same program in the other Title I eligible elementary buildings.

Mr. **Greer**. Mr. Chairman, members of the subcommittee, as indicated, my name is Robert O. Greer. I am Assistant Superintendent of Public Instruction in the Ohio Department of Education.

For me it is a pleasure to have this opportunity to speak with you concerning the relationship of state funded compensatory programs and Title I of the Elementary and Secondary Education Act.

I don't intend to read all this printed testimony, if you don't mind. But before describing the relationship of the two programs, I will just briefly cover the description of how the state compensatory program is funded in Ohio.

There are two components, one called Disadvantaged Pupil Program Funds, and the other is Disadvantaged Pupil Impact Aid.

Several years ago, when we were doing studies of the real problems of poverty and the impact on learning in the big cities, we found that we should have something we called municipal overburden.

It didn't flow as smoothly as we anticipated, so we went back and used it as a disadvantaged impact program instead, to spread the monies a little further, and make it a different kind of program from DPPF.

In 1967, as Mr. Mottl knows well, the Ohio General Assembly recognized, after a needs assessment, that Ohio public schools needed something to counteract mobility, social change, the business of running up and down the freeways for better education in the cities.

So they came up with disadvantaged pupil program funds. They based it on an amount of dollars to be distributed for the improvement of education and cultural status of disadvantaged youngsters. They said that any district having 50 or more children five to 17 whose parents were receiving aid to dependent children would be eligible for participation in the program.

They also said that we should develop these funds and distribute them based on a report from the State Department of Public Welfare, in January, preceding the fiscal year.

Now, if a district had 50, and this became just 5 percent of the funding source, then they too were eligible.

The legislative intent, then, was to provide state categorical aid to enable eligible public school districts to develop and implement special programs for educationally and culturally disadvantaged children in our large urban centers.

Now you notice we stressed urban there. Since 1967 we have learned that with the mobility of youngsters and families in Ohio, the problem is not just now remaining in the core cities, the eight largest cities.

We have children from parents in the areas of the state where we have decaying farms, or industrial sections which have not been as strong as they used to be. So, those people move back and forth between the cities, to the suburban districts now, to the exempted villages, and to the rural areas.

Therefore, the programs have grown from 131 districts to 454 participating districts as of this year.

It was determined basically that the disadvantaged pupil program funds were to be used for any child in a Title I qualified building in each school district. Children with the greatest needs were to be given first consideration.

Now, these may or may not be children eligible for AFDC monies, but should be children who exhibit the greatest academic, cultural, emotional or health needs. Once a building was eligible, once a district was eligible, any child in that building who showed these kinds of needs was eligible for it.

Now, in order to understand, Mr. Chairman, the importance of how this came about, and how the criteria were set, we have listed for the record the different criteria for approval on pages 2, 3 and 4 of the testimony. I won't go over all of that.

I also have brought handouts for the committee of the actual printing of the regulations as were established by standards. In order to establish this standard for any kind of expenditure of this nature in Ohio, we must go through a chapter 119 hearing.

For about a year we listened to all kinds of witnesses. We finally came up with standards that are now published, of course, with the Secretary of State and the other officials as necessary in our state.

Along with that, I have for the record the guidelines—a separate set of guidelines for each district, just called BPF, which covers all the methodology, three publications which cover expenditure patterns showing that most of our money is going into the areas of reading and mathematics and remediation, and the expenditure pattern over a period of years since 1968, title DPPF, a historical view.

I would like to leave these for the record as well.

Now, accounting and reporting is important to us. How are we sure that state dollars, $66 million for the Biennium, cannot be supplanted, cannot be used to supplant. We follow the same Title I regulations, and we list for your information on page 4, again, the whole business of accounting and reporting.

Some of our districts didn't believe us at first, that we were going to have them build in evaluation in the original programs. The state department must study the programs and monitor them.

The funding history has shown us that if anyone tries to supplant dollars, either Title I or DPPF, we immediately follow a coded system of all staff members appointed, all things put into the program.

On our two basic reports that come into the computer services annually, it kicks out any kind of violation that would show that money has been misused. So far beautifully we have had excellent audits from GAO and from the state auditor, in both Title I and DPPF programs.

We have charts on page 5, and tables 1 and 2 on page 6, showing the different types of expenditures since Senate Bill 350 in the 107th General Assembly in 1967. It shows we started with a minimum of $42 per pupil, and finally went up to the $200, which was allocated as a maximum by the legislature in 1972.

Due to the increase in the number of districts, and the number of youngsters on AFDC in the state, this year's allocation ran $127.50 per pupil.

The chart on page 6, table 2, would indicate that in the larger cities in Ohio we had a distribution of some $21 million, which is most of the heave percentage having the highest amount of allocation, of $6 million, and Mansfield having probably the lowest, of $201,000.

So, we see about 16 percent of the cities receive 65 percent of the total amount allocated. This represented 3 percent of the 454 eligible districts. The remaining amount of $11 million was spread over 438 districts. Heaviest funding below the $200,000 went to suburban school districts, or to exempted villages.

We might mention here, Mr. Chairman, members of the committee, that the business of poverty is no longer locked into just one core city, or to the core cities in the state. It moves along the freeways and byways to the suburban cities as well.

Five years ago we might have had suburban districts with no EDC children. Now we find them growing to the figures of 200, 300, 400, 500, which creates quite a need for them.

Now, let's look briefly at the other program, DPIA. While DPPF funds are restricted to Title I schools, the next component of state and compensatory program, DPIA, is used as a general expenditure purpose. This is what we used to call administrative overburden. These funds were designed primarily to assist major cities.

Now that is spreading as well. We opened with six major cities. Now we are up to 93 cities, and exempted villages, suburban districts, eligible for this money.

The rules and regulations are on page 7 of the printed testimony, and the formula of distribution for this is found as Appendix A. We find also a chart, Appendix B.

Now, I hope that this brief overview gives you some idea of the mechanics of these two components.

We would like to emphasize now the comparability with the existing Title I legislation.

The Ohio legislature agreed with the Congress on the importance of concentrating services on those students who have the greatest educational need, and attend schools in areas of high economic deprivation.

The Ohio Department of Education believes strongly in the concept of the categorical aid for both Title I and DPPF. Thus, the state compensatory programs are restricted to only those buildings that are eligible for Title I funding.

In general, the two funds are coordinated into one program at the school district level, with each one complementing the other.

In many districts, Title I funds provide the supplementary reading and math instruction, while DPPF funds, state compenatory, are used to provide the supportive services, such as counseling, health services, social services, and so on.

In other districts, the two funds are used to provide the same academic instructional program, either in different buildings or at a different grade range. Appendix C speaks to this point.

Let's suppose we have a building in Cleveland or Toledo—better not mention Toledo since they are closing today—or some of our other districts, a reading program operated by Title I.

State compensatory money would pick up the program for the same children, when they leave Title I. If Title I has K-3, we say that you don't drop that youngster. You pick him up and carry him on through because it has been our observation that once you try to build a bridge for heavy learning for a youngster and suddenly drop him off, he goes backward instead of forward. We do not want this to happen in our state.

The two programs are not in competition with each other for the same students, but they operate as a cooperative, coordinated effort to bring the most service possible to those educationally disadvantaged.

The success of Title I in Ohio was demonstrated in fiscal 1976 when 65 percent of the children enrolled in Title I reading programs achieved at least one month of growth for each month enrolled. That is documented by test data.

In the Title I math program, 65 percent of the children achieved at least one month of growth for each month enrolled. We think that is great proper to follow through and make those assessments, so that we can document what we say.

Now, I could run on and on for days here. But I know everybody has something to say, and everybody is busy here.

I would simply urge this committee to keep the Title I provisions the same as they are now, which allows us to continue the same kind of concentrated educational service, to those educationally disadvantaged students mostly in need of help.

State compenstory education in Ohio does not just supplement Title I. We may also use it to supplement Indochinese refugee student education, which is funded through federal funds, native American programs, which are funded through federal funds.

We now have a strange thing that we are finding, that we have hundreds of new Japanese students coming in because a Honda plant is coming to the state, so we have to build some kind of curriculum for them.

DPIA funds could be used for that kind of thing. What we are trying to do is dovetail every way we can with the support of Title I, which is a foundation program for the improvement of learning and the eduational services to the disadvantaged children in our state and others.

I am mostly pleased to have been able to rattle off this much with you. I have tried not to take too long.

The supportive documents here will, of course, be available for your perusal.

Chairman PERKINS. Without objection, all those documents, if they are not too lengthy, can be inserted in the record.

[The information referred to follows:]

STANDARDS AND GUIDELINES FOR URBAN EDUCATION

THE ALLOCATION OF FUNDS FOR THE IMPROVEMENT OF THE EDUCATIONAL STATUS OF DISADVANTAGED PUPILS (ORC 3317.024) (F)

OHIO DEPARTMENT OF EDUCATION
COLUMBUS, OHIO

1975

STANDARDS FOR THE ALLOCATION OF FUNDS FOR THE IMPROVEMENT OF THE EDUCATIONAL STATUS OF DISADVANTAGED PUPILS

(ORC 3317.024) (F)

EFFECTIVE NOVEMBER 1, 1975

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Ambrose Brazelton
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OHIO DEPARTMENT OF EDUCATION
Columbus, Ohio 43215

INTRODUCTION

Martin W. Essex, Ohio Superintendent of Public Instruction, has termed urban school development "the modern frontier of education." With three-fourths of Ohioans residing in cities, and one of every four elementary and secondary pupils enrolled in Ohio's eight largest school districts, this statement can be statistically dramatized.

Ohio's residential complexion during the decade 1970-1980 presents many questions for the educational leaders of this once highly agrarian state. Do Ohio cities face the same major urban disorientation that characterize the national scene? Are factors along the link of modern expressways creating changing population pockets? Does a series of riots, boycotts, strikes and failing levies speak to mounting dissatisfaction with the educational and social system? Is education in urban Ohio merely planning for the future or is it taking positive action by Planning the Future?

Those persons who are professionally associated with education in Ohio have a grave responsibility to more than two and a half million students and to the citizenry in general. They do not, of course, hold this responsibility alone. Correcting the many ills produced by mobility, family disorganization, questionable educational methods, modification of values, teacher preparation, and the total problem of social change requires the enthusiastic cooperation of all elements in the larger community.

To gain accurate and detailed information about the current state of education in urban centers, the Ohio Department of Education has taken the position that the immediate call to action must come from officials responsible for the conduct of education within the state. On February 5, 1968, the Office of Urban Education in the State Department of Education, under the direction of an assistant superintendent, was officially opened. Various consultants and conferences have served as a source of information and guidance to the office. A continuing committee on urban school development will serve in an advisory capacity.

The major purposes of the Office of Urban Education are to bring varied educational approaches, inside and outside the Department of Education, into proper prospective and to coordinate the efforts of private and public agencies, so that benefits from the present and planned facilities serving the city school can develop to the fullest.

It is obvious that the urban education crisis in Ohio is a massive problem. The growth of school population in the major cities has caused the traditional systems of educational control to seem outmoded, remote and complex. One wonders if the large, urban educational giant, as now structured, can be responsive to community and neighborhood needs. As the problems of the urban areas do not emanate from any single origin and then take a simple, straight direction, it follows that the city's educational problems answer to no single, simple, easy solution.

In order to begin a concentrated attack on the problems of education in our large urban centers, Ohio began, on January 1, 1968, a support program for school resources to provide special assistance for the disadvantaged. The first action of this type in the Midwest to grant state compensatory funds, it gave an educational impetus in Ohio that is unprecedented. Senate Bill 350, passed by the 107th General Assembly in 1967, established criteria for school district eligibility to receive state Disadvantaged Pupil Program Funds. District eligibility was based on the factor of 100 students or at least five percent of a district's enrollment coming from families receiving aid to dependent children payments. In its first year, the support program provided $84 per year per eligible child residing in the district.

Under House Bill 531, passed in 1969, the legislative intent was to provide up to $200 per eligible child per year. However, funding reached a level of only $150 per child in fiscal 1970 due to the expanding number of eligible districts. Appropriations in 1971 allowed an increase to $175 per pupil.

In 1972, Amended Substitute House Bill 475, passed in 1971, lowered the eligibility figure to 50 resident ADC pupils, accounting for a jump from 131 eligible districts in FY 1971 to 259 districts in FY 1972. In 1973 per pupil support averaged $189.56 out of an annual appropriation of $33,337,400. The number of eligible districts and the number of eligible children have maintained a steady climb since 1970. Although per pupil allocations have declined to a low of $129.90 in 1975, excellent planning and coordination are utilized to develop and support superior supplemental educational services.

Robert O. Greer
Assistant Superintendent
Urban Education

RESOLUTION TO ADOPT STANDARDS FOR URBAN EDUCATION

I RECOMMEND the adoption of the following resolution:

> WHEREAS Ohio became the first state to initiate state-supported compensatory programs for disadvantaged youth through the enactment of Section 3317.06 (F) of the Ohio Revised Code and the adoption of standards for urban education by this Board of Education on November 13, 1967; and
>
> WHEREAS subsequent actions by the General Assembly and requirements of the Secretary of State make it mandatory to revise said urban education standards; and
>
> WHEREAS an ad hoc committee on urban education has thoroughly studied provisions of the proposed standards and recommended the proposed standards for adoption; and
>
> WHEREAS the State Board of Education, on September 8, 1975, declared its intent to adopt standards, rules and regulations for urban education, pursuant to the provisions of Chapter 119 of the Ohio Revised Code; and
>
> WHEREAS due consideration has been given to all testimony provided at said public hearing; and
>
> WHEREAS the State Superintendent of Public Instruction has recommended the adoption of said standards: Therefore, be it
>
> RESOLVED that Standards EDb-501-01 through EDb-501-06 be, and they hereby are, adopted to become effective November 1, 1975; and, be it
>
> FURTHER RESOLVED that Standards EDb-501-01 through EDb-501-06, as adopted, supercede existing Standards EDb-501-01 through EDb-501-06, effective November 1, 1975; and be it
>
> FURTHER RESOLVED that the Superintendent be, and he hereby is, directed to file a copy of this resolution and Standards EDb-501-01 through EDb-501-06, as adopted, with the Secretary of State no later than October 21, 1975.

I certify that the above is a true and exact copy of the Ohio State Board Resolution to adopt Standards for Urban Education at its meeting on October 13, 1975.

Martin W. Essex

Martin W. Essex
Secretary, State Board of Education
Superintendent of Public Instruction

STANDARDS FOR THE ALLOCATION OF FUNDS FOR THE IMPROVEMENT OF THE EDUCATIONAL STATUS OF DISADVANTAGED PUPILS (ORC 3317.024) (F)

EDb-501-01 Program

1. An amount of state funds is made available to eligible school districts for the design and operation of special programs to improve the educational and cultural status of disadvantaged pupils, pursuant to Section 3317.024 (F) of the Revised Code.

   a. The State Board of Education shall adopt rules and regulations implementing this subsidy and approve the allocation of funds to participating districts.

   b. The State Department of Education shall review and recommend program proposals for funding, provide appropriate consultative services to participating districts, keep adequate fiscal and program records and reports, and establish evaluative criteria for effective program appraisal.

   c. The participating districts shall plan and propose suitable programs for funding, use funds in accordance with approved budgets and for approved purposes, maintain adequate fiscal records, and submit such reports as the Department of Education may require.

EDb-501-02 Allocation of Funds

2. Approved programs may be funded to the extent of an annual amount not to exceed two hundred dollars times the number of children ages five through seventeen residing in the school district who were receiving aid to dependent children during the month of January preceding the start of the fiscal year.

   a. A school district is eligible to participate when it enrolls fifty residents between five and seventeen years of age whose parents are receiving aid to dependent children, or a number of such residents equal to five percent of the average daily membership of the school district as reported pursuant to Section 3317.03 of the Revised Code, or both.

   b. Calculations shall be based upon the number of children ages five through seventeen residing in each school district whose parents received aid to dependent children during the preceding month of January, and certified by July 1 of each year to the State Board of Education by the State Department of Public Welfare.

EDb-501-03 Applicant Procedure

3. On or before a date established by the Department of Education, participating districts shall submit a program proposal consisting of a narrative part and a budget estimate, for approval by the State Department of Education.

   a. The narrative part shall briefly but accurately describe --

      (1) The target group of pupils to be served, their educational and cultural characteristics, and the means used to identify them;

      (2) The specific problems of educational and/or cultural disadvantage that need to be resolved and that cannot or are not being met with existing programs or resources;

      (3) The procedures that are proposed to meet the problems;

      (4) The staff, services and materials that are needed to conduct the program;

      (5) The evaluative procedures that will be used to determine the success of the program in meeting its objectives.

   b. The budget estimate shall indicate --

      (1) The direct costs of the program, which shall supplement but not replace the existing level of support in the district;

      (2) An itemization of proposed expenditures for administration, instruction, other services, materials, supplies and equipment.

EDb-501-04 Criteria for Approval

4. In reviewing program proposals, the Department of Education shall use the following criteria:

   a. Programs shall be conducted only in school buildings which qualify for participation in Title I of the Elementary and Secondary Education Act.

   b. Programs shall be designed specifically around broad educational goals to serve the needs of disadvantaged pupils, including but not limited to --

      (1) Academic achievement and remedial programs
      (2) Adaptation of curriculum, instructional methods and materials
      (3) Cultural enrichment experiences
      (4) Dropout prevention
      (5) Home-school and adult education programs
      (6) Improvement of communication skills
      (7) Improvement of health and related services
      (8) Improvement of library services
      (9) Motivational and self-imagery development
      (10) Safety and building security

c. Activities, methodology or personnel needed to implement the ten major programmatic headings may include, where feasible --

  (1) Use of counselors
  (2) Use of paraprofessionals
  (3) Teacher and staff preservice and inservice training.
  (4) Take-home learning kits
  (5) Improvement of pupil-teacher ratio
  (6) Special tutoring
  (7) Camp, farm, or environmental education
  (8) Special classes for disruptive pupils
  (9) Executive teacher plan
  (10) Use of security guards

d. The program shall be economically feasible and efficient.

e. The program shall serve the needs of highest priority among the target group of pupils.

f. The procedures to be used in achieving the program objectives shall be appropriate, adequate and efficient.

g. Adequate evidence shall be submitted that the proposed program will supplement the regular school program.

h. The means for evaluation shall be appropriately built into each program. Written evaluation of each program shall be submitted to the Department of Education within forty-five (45) days following the close of the program.

EDb-501-05 Accounting and Reporting

5. Monies spent for implementation of approved programs shall be accounted for in the same manner as other local and state funds, with provision for separate budgeting and accounting to establish and verify the funds expended for this purpose.

a. A fiscal report shall be filed with the State Department of Education no later than November 15 following the close of the fiscal year. The report shall include the following information:

  (1) The amount approved for the program
  (2) The total of all funds received for the program during the fiscal year
  (3) The amount of all expenditures incurred during the fiscal year
  (4) Outstanding unliquidated commitments
  (5) Balance of state funds on hand

b. Funds approved for the program shall be allotted to the district on a monthly basis, based on estimated expenses.

c. In the event that monthly allotments for the year exceed actual expenses by the district, such excess shall be credited as an advance payment on a current program, or future programs, or returned as excess payment.

EDb-501-06 Restrictions

6. Expenditures shall not be approved for the following:
   a. Administrative and other costs not directly related to operation of the program
   b. Funds expended prior to approval of a program
   c. Funds expended over and above the approved amount.
   d. Funds expended for capital outlay purposes.
   e. Funds expended for equipment in excess of 10 percent of the total amount approved for the program.

DISADVANTAGED PUPIL PROGRAM: GUIDELINES

DPPF ELIGIBILITY

Disadvantaged Pupil Program Funds may be used for any child in any Title I qualified building in a school district. **It is essential that those children with the greatest needs be given first consideration.** These may or may not be children eligible for ADC monies, but should be children who exhibit the greatest academic, emotional, or health needs. The number of children ages 5-17 whose parents receive ADC is used only as a factor to compute the amount of the grant to each shool district. Programs should never be labeled or identified as ADC programs.

PROGRAM PLANNING

Needs Assessment

For the purpose of determining whether Disadvantaged Pupil Program Funds are aimed directly at the elimination of educational disparities, school districts should identify specifically the educational needs of their students by means of an educational needs assessment. An educational needs assessment is a process by which educational needs of students are identified and ranked in order of importance. The term "need" is defined as the difference between what a student has and what the student should have in the cognitive, psychomotor, or affective domain.

Standards for Needs Assessment

It is essential that standards be reasonably set. A clear, logical relationship between student performance and district expectation should be made. Standards that are useful in determining needs:

1. National, statewide, or local norms.
2. Achievement levels in similar districts.
3. Achievement of specific performance objectives.
4. Desired student or teacher behaviors.

Involvement in Assessment and Planning

Needs assessment and subsequent programs should be determined by many minds. All too often, administrators have worked in isolation when developing new programs for their school districts. Planning must involve more than one or two people if programs are to serve the needs of the students effectively. Ideally, everyone directly affected by the school system – superintendents, central staff, boards of education, building principals, teachers and other professionals, paraprofessionals, students, parents, and residents of the community – should be involved in assessment of needs, establishment of goals and program planning. It is especially important to respond to the needs perceived by students, and by those professionals and paraprofessionals who provide direct services. Programs developed solely by teachers which do not take into account the students' perception of needs may very well fail; but so may those developed by students without consideration of the constraints under which teachers may be compelled to operate. The desires and perceptions of parents and community persons should also be included. Sound program planning takes time and patience, and demands that those participating listen to and appreciate each other.

Authorized DPPF Areas

Once the school district establishes a hierarchy of needs, reference should be made to the authorized DPPF program areas. These program categories have been determined by the Urban Programs Office as the most representative of the educational needs facing the target population addressed by this funding source. When the district determines that student needs correlate with authorized DPPF program areas, the development of positive programs should proceed. Authorized program areas:

1. Academic achievement and remedial programs.
2. Adaptation of curriculum, instructional methods and materials.
3. Cultural enrichment experiences.
4. Dropout prevention.
5. Home-school and adult education programs.
6. Improvement of communication skills.
7. Improvement of health and related services.
8. Improvement of library services.
9. Motivational and self-imagery development.
10. Safety and building security.

Establishing Goals and Objectives

After needs have been established, long-range goals and short-range objectives should be developed and written. **Outcomes must be established to be of direct benefit to students.** If professionals and others benefit as a result of the attained outcomes, this can be considered a fringe benefit. "Let's keep children first."

Goals stated in general terms should include these elements:

1. Concrete evidence of present learner status.
2. A set standard of reasonable expectation of learner status.
3. How long it will take to reach the desired outcome.

Objectives should be stated in realistically clear, precise, and measurable language. The following elements should be included:

1. Population to be served.
2. What is being measured.
3. Instructional period being measured (usually shorter than the period outlined in the goal section).
4. Expected outcome.
5. Percent of population that will achieve outcome.
6. Measuring device or method used to determine outcome.
7. When the measuring device will be applied.

For example, an objective might be stated as follows:

At the conclusion of the project period of June 1, 1975, 80 percent of the third grade pupils in the participating schools will gain 1.2 years in reading comprehension as measured on standarized test Form "Y" over a pretest score on standarized test Form "X" administered in September, 1974.

EVALUATION

Integral Part of Planning

Evaluation is an integral part of program planning. As programs are planned, the means of evaluating such programs must also be planned. The planners should create whatever evaluation instruments are needed, and make sure that everyone involved in the program understands what data are to be collected and how they will be used. If standardized tests are to be used, these should be assessed, a decision made as to which test or tests will be used, and provision made for administering and scoring such a test or tests. If locally-developed evaluation instruments are to be used, they should be cooperatively developed, and put into the hands of those who will use them. **Evaluation should be constant and ongoing**, rather than a haphazard exercise, hurriedly thrown together at the end of the program year.

Integral Part of Program Success

While programs are established to benefit children, **the burden for proving success of the program should not be placed solely on children**. For instance, if a school district hired classroom aides, pre-and post-testing of children as the only means of evaluating the program places an undue burden on children, and does not provide a complete picture of the program. The paraprofessionals themselves should be evaluated on the basis of the duties outlined in their job descriptions.

Classroom teachers, now relieved of some of their former duties, should be required to demonstrate an improvement in their teaching methods. Parents and students should have the opportunity to evaluate the program itself and indicate whether the addition of classroom aides has had a positive effect. Paraprofessionals might also evaluate the total program, which would measure their understanding of their roles in the classrooms.

Methods of Evaluation

It is wise to evaluate programs class-by-class or school-by-school. Such evaluations will often pinpoint problems in specific schools or specific classrooms, thus opening the door for further, more specific, program planning in the future. For instance, a reading specialist who serves several schools may discover that auditory discrimination is a bigger problem in one school than in any other. When this fact is made clear, classroom teachers in that building could be given in-service training to enable them more adequately to assist children who have this particular problem.

Because such a wide variety of programs are funded through DPPF, it is impossible to develop a single form which will adequately evaluate all programs. Most programs funded by DPPF will fall into two general categories — academic achievement or supportive services. Some have elements of both. Methods of evaluating these two general categories could include, but are not limited to, the following:

1. Academic Achievement
   a. Pre-and post-testing (academic).
   b. Education-related factors: tardiness, absence, dropout rate.
   c. Evaluation (and self-evaluation) of personnel employed in the program.
   d. Parental involvement: increased attendance at parent-teacher conferences, better communication between home and school.
2. Supportive Services
   a. Relevant statistical data: number of children served, categorized by age, grade level, and school; type of services provided (i.e., home visit, individual or group counseling, vision screening).
   b. Follow-up after services provided.
   c. Pre-and post-testing (attitude).
   d. Random sampling of academic and attendance records of children served by supportive personnel.
   e. Parental involvement: increased attendance at parent-teacher conferences, better communication between home and school.

Evaluation Model

As an additional aid to school districts, it is recommended that the following information be included as a part of an evaluation submitted to the Urban Programs Office:

1. Statement of needs.
2. Who contributed to the needs assessment?
3. Goal or goals of each DPPF program.
4. Evaluation instruments used –
    a. list of standardized tests used
    b. copy of locally-developed evaluation instrument(s).
5. Who contributed to the evaluation of the program?
6. Statistical data –
    a. pre-and post-test scores
    b. categorized data of supportive services personnel
    c. total responses to locally-developed evaluation instruments.
7. Summation of statistical data.
8. Have goals been reached?
9. Recommendations for the following year. Indicate who was involved in making such recommendations.

Submission of Program Evaluation

School districts which receive DPPF grants are required to submit an evaluation of their DPPF program(s) **45 days following program completion.**

State Board of Education Regulation, EDb-501-04

ChildrenFirst
EDUCATING OHIO'S DISADVANTAGED CHILDREN — URBAN AND RURAL

Published by the Division of Urban Education, Ohio Department of Education, 65 South Front St., Columbus, Ohio 43215
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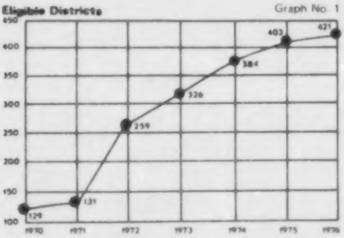
DPPF: The Historical View

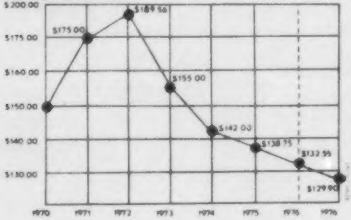
1976, fiscal and otherwise, will be a year of taking stock, of measuring progress. The Office of Urban Education, charged with meeting the educational needs of Ohio's disadvantaged pupils in the first state-financed program in the Midwest, asks if Ohio has really put Children First.

Eligible Districts Graph No. 1



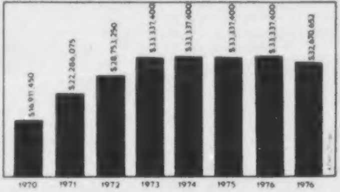
(2) The appropriations figures speak for themselves. The 1970 appropriation provided eligible school districts $150 per year for every disadvantaged child. As the number of eligible districts increased (see Graph No. 1), appropriations rose in 1971, 1972 and 1973, after which the figure remained constant. The number of eligible districts continued to rise, however, accounting for the figures in Graph No. 3.

Per Pupil Allocation Graph No. 3



Senate Bill 350, passed by the 107th General Assembly in 1967, established criteria for school district eligibility to receive state Disadvantaged Pupil Program Funds. For a district to be eligible, at least 100 students or at least five percent of a district's enrollment had to come from families receiving Aid to Dependent Children payments. Amended Substitute House Bill 475, passed in 1971, lowered the eligibility figure to 50 resident ADC pupils, accounting for the jump from 131 districts in FY 1971 to 259 districts in FY 1972. The number of eligible districts continued to climb to 421 out of a total 614 districts in the state; the total number of districts has remained fairly constant since 1970.

Legislative Appropriations Graph No. 2



(3) Under HB 531, passed in 1969, the legislative intent was to provide up to $200 per ADC child per year; funding stood at $150 per child in FY 1970. Appropriations in 1971 allowed an increase to $175. In 1972, AM SUB HB 475 provided support that averaged $189.56 ($175 for five months, and the full $200 for only seven months). In 1973, appropriations reached $33,337,400, but the number of eligible districts increased, as did the entire number of eligible children. So per pupil allocations declined. Even though the number of districts and pupils continued to increase, appropriations remained constant; thus per pupil funding has decreased proportionately every year since. The recent 2% cut in funding mandated by the Office of the Governor brings the current amount available per student to an all-time low of $129.90.

Chairman PERKINS. Our next witness is Mr. Richard Boyd, Washington State Department of Education. He is not here yet? All right.

We will go to the next witness, Mr. Bill Whiteneck, Deputy Superintendent for Administration, California Department of Education.

[The statement referred to follows:]

TESTIMONY

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON ELEMENTARY, SECONDARY
AND VOCATIONAL EDUCATION
October 28, 1977

Mr. Chairman, Members of the Subcommittee, my name is William D. Whiteneck, and I am Deputy Superintendent of Public Instruction for the State of California. It is a pleasure to appear before you this morning to discuss the relationship between California's Compensatory Education program, which is known as the Educationally Disadvantaged Youth Act (EDY), and Title I of the Elementary and Secondary Education Act.

In addition to talking about the current relationship between these large compensatory education programs, I would also like to say a few words about California's new school finance legislation and the relationship between Title I and another major state supplementary service program--the School Improvement Program. I believe that all of these issues need to be addressed so that you can understand the context in which Title I funds are delivered in California.

As reported in the recently released NIE report entitled Administration of Compensatory Education, California is one of 17 states in the nation which has a state compensatory education program[1]. In fact,in California we have several types of compensatory education programs[2]. The Educationally Disadvantaged Youth Act is by far the largest, and in this fiscal year it is only slightly smaller than our Title I grant award. (In 1977-78 the EDY allocation is 75.6% of the state's Title I grant award.)

TABLE I
Comparison of Title I and EDY Funding for the Period 1973-74 to 1977-78

	EDY	TITLE I	EDY as a percent of TITLE I
1973-74	81,180,000	121,348,148	66.9%
1974-75	83,732,355	128,062,203	65.4%
1975-76	90,389,376	130,039,420	69.5%
1976-77	97,484,218	139,880,257	69.5%
1977-78	118,654,936	156,938,183	75.6%

Table I displays the allocation levels for EDY and Title I since EDY was enacted in 1973-74. Clearly, California has committed a significant amount of state resources to the disadvantaged, and I am glad to report that California's new school finance bill increases and strengthens this commitment. Before I describe the changes made to the California EDY program by this new act and the areas of Title I law which currently give us concern let me describe for you the allocation process used in the existing EDY program.

In many ways the Title I and EDY allocation processes are quite similar and in some cases identical. Like Title I, EDY primarily uses poverty counts to allocate funds from the state to the district level and then employs achievement criteria for selecting eligible schools and participants. Table II displays all of the major allocation steps for both EDY and Title I.

TABLE II
Summary of California's Allocation Process for EDY and Title I

	EDY	TITLE I
1. Allocation from state (county level for Title I) to school districts	AFDC counts weighted for a factor composed of 1) concentration of poverty students, 2) concentration of limited and non-English speaking students, 3) a pupil transciency factor	AFDC counts
2. District Eligibility	Districts must have a combined factor (see above) greater than the state average factor for all districts	All districts are eligible which have an AFDC count
3. School Eligibility	Concentration of low achievement students (below 25th percentile). Schools are eligible in rank order	Concentration of AFDC students subject to the primary restriction that only schools with above average district poverty levels are eligible
4. Grade Level Emphasis	State regulation requires an emphasis on the elementary grades first	State regulation requires an emphasis on elementary grades first
5. Student Eligibility	Students scoring below the 50th percentile on achievement tests	Students scoring below the 50th percentile on achievement tests

Presently in California, Title I funds are allocated to almost all of our 1042 school districts. In contrast the current EDY funds are allocated to approximately 530 districts which have above average concentrations of poor students, limited and non-English speaking students and high transiency rates. Within districts, although school eligibility criteria are different, it is obvious that there is a high degree of overlap between them. (In California the correlation between the AFDC rate and achievement is .69 at the third grade level, and in some districts this correlation is well above .85.)

It is also important to note that the program provided to the students served by Title I and the students served by EDY is exactly the same. At this most important level, EDY and Title I are identical in terms of the benefits they provide to disadvantaged children.

However, it is also at the student level that we have encountered a significant problem in the relationship of Title I and EDY. More specifically, Title I supplement, not supplant, requirements inhibit the effective utilization of California's EDY funds. This problem is highlighted by the U.S. District Court ruling in the Alexander vs. Califano court case that the simultaneous allocation of EDY and Title I funds used in California is in violation of a strict interpretation of Title I supplanting provisions. The supplanting provisions require that state funds be allocated without regard to the allocation of Title I funds in order to ensure that Title I students receive their fair share. If this ruling is sustained, a major shift in Title I funding will occur within districts which will severely disrupt existing compensatory programs. (Funds will be shifted out of elementary schools into intermediate and high schools.) As a result of this shift, currently constituted advisory councils and services to nonpublic school students would also be affected.

In brief, the major issue which arises out of Alexander vs. Califano is whether a state with a significant compensatory education program of its own can choose to serve educationally disadvantaged students in non-Title I eligible elementary schools before it serves other educationally disadvantaged students in Title I eligible secondary schools. The issue (due to limited funding) is not how many educationally disadvantaged students will be served, but which educationally disadvantaged students will be served. The Court's application of the Title I supplanting provisions would not give the state a choice. Instead, it would require the reallocation of the state's EDY funds so that Title I eligible elementary schools would receive such state funds before they receive Title I funds. In many districts this change would mean that only a portion of the Title I eligible elementary schools will be served by EDY.

As a result, in any variation examined, fewer elementary students would be served by EDY. In addition, some amount of Title I funds would be reallocated into the higher grades. If it is sound educational policy to concentrate upon overcoming educational disadvantages at the elementary level before moving on to the secondary level, and we believe it is, then the implementation of such a policy is precluded by the current court interpretation of the law.

I think it is also important to note that by 1979-80 the combined state and federal funding level for compensatory education will be approaching the $400 million level. As a result, a large portion of the future increases in compensatory education support will automatically flow to the higher grades. Thus, the implementation of the court ordered remedy based on current law appears to be a more awkward and painful way of reaching a goal we will attain under our existing system simply by increasing the current support levels.

California completely supports the provision of compensatory education services for all needy students at all grade levels. However, in light of the large need for compensatory education services and the limited amount of federal funds available, we believe that the State should be allowed to phase-in its own compensatory education funds in a way which is educationally sound and consistent with the services already provided by Title I.

I would now like to say a few words about California's new school finance legislation and the changes which will be made in the EDY program beginning in 1979-80. I must start by saying that this legislation clearly sets the trend for the rest of the nation in that it not only rectifies the inequities identified in Serrano vs. Priest but also provides substantial amounts of new funds for all of California's supplementary services programs including EDY, Special Education, and the School Improvement Program.

Although the Serrano remedies included in this landmark legislation may not appear directly relevant to your concerns regarding the relationship of Title I and EDY, these provisions are clearly important to the development of sound compensatory education programs. Indeed without a strong base it is nearly impossible to develop a quality compensatory education program. Today I am pleased to report that our new school finance legislation will provide an additional $3 billion over the next five years to correct the Serrano inequities. As a result, by 1981-82 approximately 82% of California's students will be in districts where differences in expenditures (of more than $100) will not be the result of disparities in local property wealth[3].

Along with a more equitable allocation of base resources, the new school finance measure also contains several significant improvements in the EDY allocation process. Beginning in 1979-80, the following important changes will be made:

1. State allocations will be increased by approximately $60 million (total allocations for the new program in 1979-80 will be $190 million).
2. The numbers of participating districts will be significantly expanded and as a result over 90% of the state's poverty students, and limited and non-English speaking pupils will be in districts receiving support.
3. School eligibility will be determined by an index of three equally weighted factors: concentration of poverty students, concentration of low achieving students, and concentration of limited and non-English speaking students.

4. In allocating additional state funds to school districts, existing state and federal compensatory education funds will be recognized so that new state funds will be allocated to districts on the basis of their relative unmet need for compensatory education support.

I would like you to particularly note this final provision of the new EDY formula, because at present this aspect of our new state law is in direct conflict with the existing Title I statute. Specifically, current Title I law prohibits the allocation of Title I funds to a state which has taken into consideration the allocation of Title I funds for the purposes of allocating State Aid[4].

At this point, I hasten to add that in developing this provision the California Legislature consciously chose to recognize the current distribution of Title I and existing EDY support so that new funds would be allocated to districts with the greatest relative unmet need. Without such recognition we do not believe we can make the most effective use of all our state and federal compensatory education resources. Furthermore, we believe that such an approach is wholly consistent with the sound management of all supplementary resources in states which have made large fiscal commitments to the disadvantaged population.

A third, and equally important aspect of the new school finance legislation is the expansion of the California School Improvement Program to grades 4-12. Since 1973-74, California has been implementing in grades K-3 this new type of supplementary service program which we believe is critical to the development of a quality education system. As enacted, this important part of the new state law has the following major characteristics:

1. It is designed to initiate a schoolwide process to improve the quality of educational services for all students, including the disadvantaged, by providing among other things instructional services tailored to meet the needs of each student
2. It is being phased-in over several years
3. It creates a strong bond between high and low achieving schools within a district, because schools are selected for participation on a competitive basis which takes into account the relative success of all participating schools in a district
4. Funds provided are not considered part of base resources and they must be appropriated each year by the State Legislature
5. Statute requires that at least half the participating schools in districts receiving funds must be among the most educationally disadvantaged

Unfortunately, like the new EDY formula, the benefits of the School Improvement Program will be severely limited unless a change is made in current Title I law. More specifically, the Title I comparability exemption requirements are not broad enough to allow for the implementation of this program.

Because the School Improvement Program is not completely compensatory in nature, presently it must be included in the comparability tests even though it is a state supplementary program and not a base resource. As a result, almost all Title I schools must receive School Improvement funding before non-Title I schools are allowed to participate in order to avoid a violation of Title I comparability. In some districts such a restriction precludes the development of the critical link between high and low achieving schools. Without this bond most of the benefits of the School Improvement Program are lost. In the past this problem has been most severe in smaller districts. However, as the School Improvement Program is expanded from grades K-3 to grades 4-12, it will become much more of a problem.

Another important aspect of the new School Improvement Program which is clearly related to Title I is the mandate for School Site Councils. As you may know, the concept of Site Councils was originally implemented in California's Title I program in 1969-70 and we believe it is one of the most effective ways of insuring overall program integrity.

Under the new school finance legislation the School Site Council is responsible for planning, implementation, evaluation, and budgeting of the school improvement program at the school site. Clearly, this Council is a mechanism for shared authority--shared among administrators, teachers , other school personnel, parents, and (in secondary schools) students. It is our belief that school improvement occurs only after the involvement of all interested parties at the school site level. To date our experience with the School Improvement Program in grades K-3 and Title I is that the School Site Councils do work, that the notion of shared responsibility for success does become paramount, and that program effectiveness is enhanced.

In conclusion, Mr. Chairman, I would like to remind you that when you developed the Title I comparability exemption during the 1974 reauthorization of Title I your Committee report included the following statement concerning the excess cost definition :

> The purpose of this amendment is to encourage State and local spending on programs for the handicapped, for the educationally deprived, and for those with limited English-speaking ability, and not to deny them title I funds if they are using non-Federal funds for those purposes.

Mr. Chairman, I am proud to say that in California this encouragement along with the overall support you have given us through Title I has been tremendously successful. Today I have described the major supplementary programs which we have developed since 1974 and the improvements we will be making in them in the next few years as a result of our new school finance legislation.

However, Mr. Chairman, I have also identified several key areas where we need further assistance if we are to make all of our supplementary programs as effective as possible.

In the next few weeks, the Department will submit specific language to the Subcommittee regarding the supplementary and comparability problems I have identified along with other amendments which we believe would improve the delivery of all resources--both state and federal.

Mr. Chairman, at this time I will be glad to answer any questions you may have.

FOOTNOTES

[1] Administration of Compensatory Education, The National Institute of Education, September 19, 1977, page 58.

TITLE I AND SCE FUNDING LEVELS, FISCAL YEAR 1976*
($ in thousands)

	Title I	SCE
California	$154,143	$ 90,400**
Connecticut	19,673	6,473
Georgia	48,060	10,247
Hawaii	5,874	1,800
Maryland	31,660	13,000***
Michigan	85,885	23,600
Nebraska	9,334	600
New Jersey	58,747	--†
New York	200,247	140,300
Ohio	57,553	33,000
Oregon	18,331	1,000††
Rhode Island	7,186	2,000
Texas	125,574	25,400
Utah	6,425	800
Virginia	41,466	9,294†††
Washington	25,972	4,972
Wisconsin	32,003	1,500
Total	$928,133	$364,386

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*Florida is about to start a new SCE program this fall.

**Includes only the Educationally Disadvantaged Youth program.

***Program provides money only for city of Baltimore.

†New Jersey program began in 1976-77 school year, i.e., fiscal year 1977; it was funded at a level of $33 million.

††Program provides money only for city of Portland.

†††Pilot program terminated in June 1976.

FOOTNOTES

[2] The other compensatory education programs are Miller-Unruh Reading Specialists and the Demonstration Programs in Reading and Mathematics for grades 7,8, and 9. Together these programs provide an additional $18.6 million in fiscal year 1977-78.

[3] Currently, approximately 40% of the state's enrollment is in districts where differences in expenditures of more than $100 will not be the result of disparities in local property wealth.

[4] Section 143 (c)(1) of P.L. 93-380

[5] House of Representatives, Committee on Education and Labor, Report 93-805, February 21, 1974, page 18

STATEMENT OF BILL WHITENECK

Mr. **Whiteneck**. Thank you, Mr. Chairman, members of the committee. It is my pleasure to represent Dr. Riles this morning, and share with you some of our comments and concerns about California state compensatory education programs, basiclly known as our Educationally Disadvantaged Youth Act, and the federal Title I program.

In addition to that current relationship between those two programs, I also wish to make a couple of comments about California's new Comprehensive School Finance Act, and the school improvement program, which is part of that act, and how this new act in California impacts on Title I.

As you mentioned in your opening comments, California is one of 17 states contributing state funds to compensatory education type programs. In the printed testimony, on table 2, we reflect California's commitments since 1973 for up and including this year, 1977-78. We have moved from $81 million to $118 million during that five-year period.

It is our intent to utilize this EDY program to strengthen its commitment to the disadvantaged programs.

One of the key features that we wish to point out is the fact that the Title I and EDY program in California are quite similar, particularly in the allocation process, and in some cases identical.

Our state compensatory program primarily uses a poverty count, and on page 3 we have listed a comparative chart showing five areas of the two allocation processes which we think are either similar or identical.

In our state EDY program we basically use three factors under the current law. Under our new Comprehensive School Finance Act, we modify that slightly, but only to more accurately reflect some of the categories we now have data on.

But basically, California's program utilizes concentration of poverty students, concentration of limited and non-English speaking students, and a pupil transiency factor to determine whether or not a school district is greater than the state average in those areas to receive state funds.

We point out in that same table that a district's eligibility to participate is based upon the fact that they are greater than the average throughout the entire state for all districts.

I would also like to point out in the allocation of the funds, once they reach the district, to the school level, is based upon the educational needs of the schools. We use a concentration of low achievement students, those that score below the 25th percentile. Schools are ranked in eligible order and state funds are allocated on that basis.

We have had a regulation in California since 1972 which places emphasis on the early grades for both Title I of the federal act and the state compensatory program. It is our feeling that the early grades should be addressed, and then the emphasis progressed from kindergarten through third grade, up through the 12th grade.

At the school site level, students are eligible to participate in the program if they are below the 50th percentile.

I would like to point out that the program provided to the students served by Title I, and the students served by our EDY program, is exactly the same. At this very important student level, EDY and Title I are identical in terms of the benefits they provide to disadvantaged children.

However, we wish to point out that there is a significant problem in the relationship between Title I and EDY. That difficlt problem is basically the supplement not supplant requirements which we feel inhibit our effective utilization of the EDY funds.

If the details of the present court case of Alexander versus Califano are carefully examined, the California problem is readily apparent. The supplanting provision problem that we have is with regards to the fact that state funds must be allocated without regard to the allocation of Title I funds.

If the court upholds this ruling, we feel that a major shift in Title I funds will occur within districts which will severely disrupt existing programs, and this will have specific impact upon the intermediate and high schools, as well as the parent advisory committees.

One of the significant difficulties will be identification and utilization of funds at the nonpublic school. Those students will be affected.

A major issue for us arises out of *Alexander* v. *Califano*, because a state that has a significant compenstaory program of its own to serve educationally disadvantaged students in non-Title I schools, particularly at the elementary level, cannot address that program because it would basically have to serve all of those Title I programs before their educationally disadvantaged students can receive that service.

The issue, due to a limited funding, is not how many educationally disadvantaged students will be served, but which educationally disadvantaged students will be served. In the court's application of the Title I supplanting provision, it doe snot give us a choice.

As a result, fewer elementary students would be served by our EDY program. We feel it is a sound educational policy to concentrate on overcoming educational disadvantageousness at the elementry level before we move to the secondary level, and the implementation of such a policy is precluded if the court interprets the Califano-Alexander case as presently discussed.

I wish to point out that under our new Comprehensive School Finance Act, California will have a combination of state and federal compensatory funds approaching $400 million in two years.

As a result, a large portion of future increases will support an automatic flow of dollars to the secondary level. Thus, if we implement this court ordered remedy, it will be much more awkward than if we attain our goal under the existing system.

California completely supports the provision for services for all needy students at all grade levels. However, in light of the large need for compensatory services and the limited amount of funds, we believe a state should be allowed to phase in its own compensatory program and should be allowed to address all of the needs in the particular state.

Our new school finance legislation, and the changes that it has on the EDY program, begins in 1979-80. We believe that this legislation clearly sets a trend nationwide for addressing school finance issues where wealth disparity exists within states.

We also feel this comprehensive legislation provides substantial funding for disadvantaged youth, for special education, and a program in California known as early childhood education, which has now been expanded to kindergarten through grade 12, and is now called the school improvement program.

We feel very keenly that the addressing of Serrano, the addressing of the base program, is fundamental to the success of Title I and other compensatory programs.

Without a very strong base program for every child, including the disadvantaged, it is nearly impossible to develop a quality compensatory education program—to put a very strong federal and state compenstory program on a very weak basis, will just enhance the possibility of failure, and not success.

This legislation in California will provide in the next four years for over 80 percent of California's EDY, and will have an educational base program where there will not be more than $100 difference in that base program.

I would like to point out some of the key features that this new law does in relation to our EDY program.

First of all, in two years it will increase California's state funds for compensatory education by $60 million, so tht in 1979 to 1980 we will be putting in approximately $190 million.

The numbers of participating districts will significantly increase from roughly 530 districts to over 700. As a result, 90 percent of California's economically disadvantaged students and limited and non-English speaking students will be supported by some of these funds.

A school's eligibility will be determined on three factors—concentration of poverty students, concentration of low achieving students, and the concentration of limited and non-English speaking students.

However, one of the most significant factors in that new legislation is that the state will be allocating funds to the local district, based upon their aggregate eligibility of state and federal compensatory education funds.

We will recognize those state and federal funds in the allocation of any new state funds, and this is the area that we currently conflict with Title I law.

In California the legislature consciously was aware of this conflict when they passed the School Finance Act. However, they were committed that all funds made available for the disadvantaged should be taken into consideration in the distribution of funds.

We feel it is sound management to consider all supplementary resources in the state when a large fiscal commitment has been made for disadvantaged children.

A third and equally important aspect of the School Finance Act is the school improvement program that is now expanded from K-3 up through the grade 12, so it is a school improvement program for K-12.

This K-12 school improvement program is really the educational program at the school site level that welds together or brings together, puts together a comprehensive program at the school site utilizing all resources at that school.

I cannot emphasize too strongly that it is a system of recognizing every resource at that school—the base dollar, supplemental federal dollars, supplemental state dollars, and any special funds that that school has.

Let me briefly describe the five key features of the school improvement program.

It is designed to initiate a schoolwide process, to improve the quality of educational services. It is a phase-in program, and this is a key area where we have a problem with comparability. It creates a strong bond between high and low achieving schools.

We feel this is a key principal. We feel that supplemental funds in a school district should just not go to disadvantaged schools, but school improvement must take place in advantaged as well as disadvantaged schools.

However, by law each district, one-half of the schools in the program must be the most disadvantaged.

Funds that are provided under school improvement will not be considered part of the base program, but they are considered supplemental funds, and appropriated each year as supplemental resources by the state legislature.

Unfortunately, like our new EDY program, the school improvement program suffers because of limitations under the current Title I law. As I mentioned earlier, our basic problem is the Title I comparability requirement, and it conflicts with a phase-in of Title I and non-Title I schools.

I want to stress, as we do on page 9, that this program is a supplemental program, and not part of the base. We have specific state language that does not permit supplanting.

A key feature of the school improvement program is the mandate of school site councils. California initiated school site councils back in 1969 and 1970. We feel the school site council is responsible for planning, implementing, evaluating, and under the new law they also recommend the budgeting of all resources at that school.

There is a shared authority, and this is a key feature that we hold, that administrators, teachers, other school personnel, must work in harmony with the parents, and a tthe junior and senior high level students, in this cooperative effort.

If this shared responsibility prevails, then we feel program effectiveness and success is enhanced.

In conclusion, I would like to call attention to the fact that in 1974 this committee proposed that the definition for excess cost include that the purpose of this amendment is to encourage state and local spending on programs for the handicapped, for the educationally deprived, and for those with limited English speaking ability, and not to deny them Title I funds if they are using non-Title I funds for these purposes.

We are proud to say that in California we have latched on to this encouragement. The legislature, the Governor and the superintendent have made the commitment to the disadvantaged, and our program is almost equally funded to the federal program.

In the next few weeks, the State of California Department of Education will submit specific language to this committee regarding the comparability and supplanting issues which we feel must be addressed.

We will recommend this, in the spirit to improve the delivery of all resources, both at the state and the federal level.

I would be most happy to respond to any questions and submit this testimony for the record.

Thank you, Mr. Chairman.

Chairman **Perkins**. Thank you very much for excellent testimony.

Our last witness is Mr. Robert Silverstein, Director of the Legal Standards. Go ahead, Mr. Silverstein.

STATEMENT OF ROBERT SILVERSTEIN

Mr. **Silverstein**. Before I begin my testimony, I have a handout which is an outline of my testimony. Has that been given to you?

Chairman **Perkins**. Yes, thank you.

[The information referred to, the prepared testimony, and supplemental material follow:]

TITLE I AND STATE COMPENSATORY EDUCATION PROGRAMS

In general, the present Title I legal framework does not interfere with the implementation of state compensatory education (SCE) programs. Most problems have resulted from OE's failure to inform SEAs about the operation of the legal framework.

(1) Under the present legal framework, LEAs are neither required nor encouraged to favor low-income areas in the distribution of SCE funds. Title I simply requires that educationally deprived children residing in low-income areas

(a) receive their fair share of SCE funds and

(b) are not discriminated against in such distribution.

(2) Title I does not require that children participating in a SCE program also receive assistance under Title I, i.e., Title I funds may be used to meet the needs of educationally deprived children residing in low income areas who do not participate in SCE.

(3) Because Title I is underfunded, large numbers of children eligible for Title I cannot be served. As a result any exemption of SCE funds from the supplement, not supplant provision would deprive such Title I eligible, but unserved, children of the special assistance they would have received, but for the exemption.

(4) Title I permits the coordination of Title I and SCE programs through the use of comprehensive planning, consolidated applications, and joint funding.

Outline Accompanying Statement of
Robert Silverstein, Director
Legal Standards Project

October 28, 1977

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 520 • 733 FIFTEENTH STREET NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 628-6700

CABLE ADDRESS: LAWCIV, WASHINGTON, D.C.

October 26, 1977

Dear Congressperson Perkins:

In accordance with the rules of the Committee on Education and Labor I am submitting herewith:

(a) copies of my written testimony and

(b) Chapter 3 (Supplement, Not Supplant and Equitably Provided Provisions) of a paper prepared by the Project entitled, *A Description and Analysis of the Relationship Between Title I and State Compensatory Education Programs*.

Yours truly,

Robert Silverstein, Director
Legal Standards Project

RS:cm

Attachments

STATEMENT OF ROBERT SILVERSTEIN, DIRECTOR LEGAL STANDARDS PROJECT OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW TO THE SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON EDUCATION AND LABOR ON REAUTHORIZATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

My name is Robert Silverstein. I am a staff attorney at the Lawyers' Committee For Civil Rights Under Law and director of the Legal Standards Project. I appreciate your invitation to share some of my thoughts concerning the reauthorization of Title I. Before I begin my substantive presentation, let me provide you with some background about the Legal Standards Project.

Congress, in the Education Amendments of 1974, extended the Title I program through June 30, 1978. The 1974 Amendments also mandated that the National Institute of Education (NIE) undertake a study of compensatory education programs, including Title I and report the findings to Congress with recommendations concerning future federally funded compensatory and remedial education programs.

One aspect of the NIE study is an examination of the administration of Title I. Central to the study of program administration and to any conclusions concerning the future of federal compensatory education efforts is an understanding of the legal framework of Title I. This legal framework includes program requirements which specify how Title I programs are to be designed and how federal funds are to be used by LEAs which receive Title I funds, thereby defining the objectives of Title I program administration. The legal framework also includes the respective functions which SEAs and the United States Office of Education (OE) are to perform in the administration of Title I. The National Institute of Education has contracted with the Lawyers' Committee for Civil Rights Under Law to conduct the "Compensatory Education Study - Survey of Legal Standards" (Legal Standards Project) which is to describe and analyze the legal framework of Title I and state compensatory education programs.

The study's basic research objective was to determine what additions, deletions, and modifications to the Title I statute and regulations are needed to improve program administration. Specifically, we analyzed the necessity, sufficiency, consistency, clarity, and restrictiveness of the Title I legal framework.[1]

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[1] The Legal Standards Project was not asked to analyze the feasibility of developing alternatives to the basic policies and categorical aid structure of the existing Title I legal framework. We were *not* asked to analyze, for example, (a) the advantages and disadvantages of repealing Title I and enacting block grant legislation, or (b) the Title I policy of targeting only those areas in a school district having high concentrations of children from low-income families. Instead, our task was to analyze the *basis for* and the *clarity* and *restrictiveness* of the *existing* Title I legal framework.

To the extent a statutory provision is unclear or overly restrictive, we propose appropriate modifications, additions or deletions. Similarly, to the extent we found that an OE requirement was inconsistent with the Title I statute, unclear or overly restrictive, we recommend changes to ameliorate such problems.

We propose no changes to regulations found to be consistent with the statute, clear and non-restrictive, *even though an alternative interpretation might also be* consistent with the statute and legislative history. For example, since 1968 OE regulations have defined "areas having high concentrations of children from low-income families" as those areas having a percentage or number of children from low-income families as high or higher than the district-wide average. Since the standard is clear, and, when read in

[footnote continues]

The Project's analysis of Title I began in July, 1975. Our first task was to compile and analyze the following documents:

- Title I statute
- General Education Provisions Act (GEPA)
- legislative history (committee reports and floor debate)
- current Title I and GEPA regulations
- old Title I regulations
- Title I Program Directives (Program Guides)
- OE program support packages
- internal OE memoranda
- OE correspondence with states and local school districts

Based on our analysis we prepared a paper entitled, "A Description of Title I, ESEA Legal Framework and Preliminary Analysis of the LEA Program Requirements". Upon completion of this paper, we commenced the second stage of our project. NIE felt that it was important to address the basic research objective by surveying the manner in which ten states interpreted the Title I requirements.

The states selected by NIE and the Legal Standards Project included: (a) states which have enacted state compensatory education programs; (b) approximately one state from each of the

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[footnote continued from previous page]

conjunction with other provisions in the regulations, not overly restrictive given the less than full funding of Title I, we have not recommended that OE adopt an alternative definition, although other definitions might also be consistent with the Title I statute.

In certain cases, the limitations of our expertise or the need for empirical data prevented us from making specific recommendations. In such cases, we have limited our role to identifying issues requiring further analysis and decisions by others.

HEW regions; (c) at least one state from each of the following categories -- large urbanized, large rural, small urbanized, small rural; (d) states which had actively interpreted Title I and states that had not; (e) states that have been cited as having model systems for the administration of Title I, and (f) states which have been severely criticized by OE and HEWAA.[2]

The project reviewed written policy statements developed by the states, and preliminary determinations were made concerning, among other things, (a) the substance and extent of state regulation , and (b) the comprehensiveness, internal consistency, and specificity of these state regulations, and their consistency with the federal legal framework.

In addition to studying the states' legal frameworks, we spent approximately one week in each state interviewing a wide range of state officials responsible for the administration of Title I, including State Title I Directors, their staffs, State Auditors, and legal counsel. These interviews were conducted between December, 1975 and March, 1976.

During the interviews conducted in the ten states we attempted to determine: (a) the accuracy of our preliminary analysis; (b) state interpretations concerning areas which, based on a preliminary reading of the Title I statute, regulations, guidelines, and handbooks might be thought to be ambiguous; (c) perceived problems with the legal framework; and (d) areas which SEAs felt were most important to the effectuation of the

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2/ It should be noted that our papers do not identify any of the states included in our survey by name nor do they attribute information to specific individuals. The Legal Standards Project and NIE agreed that because of the nature of our inquiry it would be advisable to enter into confidentiality agreements with the states. We believe that such an arrangement does not detract from the utility of the study since we are analyzing the efficacy of the federal legal framework not those of the states.

purposes of Title I.

Following our site visits, we prepared notebooks describing the states' policies with respect to each program requirement, including appendices containing copies of written materials developed by the states. For example, regarding the "supplement, not supplant" provision, we determined which of the ten states, if any, allow a child participating in a Title I program to be "pulled-out" of a regular class for the entire day to receive services funded entirely under Title I.

The final step in satisfaction of the basic research objective was preparation of four policy papers.[3] Each paper contains, with respect to the topics it discusses:

(1) a description of the major applicable legal requirements (using non-legal terminology);

(2) an explanation of the purpose of each requirement, including references to relevant portions of the legislative and regulatory history;

(3) an analysis of the interrelationships among requirements;

(4) examples of policies developed by ten states;

(5) model questions for Title I application forms, application checklists, and monitoring instruments;

(6) recommendations for improving the clarity of the regulations and reducing the restrictive aspects of Title I.

The first paper prepared by the Project, entitled, An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I, ESEA, analyzes the requirements school districts must satisfy to receive assistance under Title I. Specifically, this paper analyzes such issues as:

(1) whether Title I requires school districts to employ particular instructional strategies, such as pull-out programs (Chapter 9);

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[3] Portions of Chapters 1, 2, 4 and 5 of the National Institute of Education's report to Congress entitled, Administration of Compensatory Eudcation (September 19, 1977) were based on the findings and conclusions contained in the four reports prepared by the Legal Standards Project.

(2) whether Title I should be amended to allow an LEA to use Title I as a general aid fund in schools where 80 percent or more of the children are educationally deprived (Chapter 12);

(3) whether the criteria for demonstrating comparability should be modified to take into consideration recent school finance reforms at state and local levels (Chapter 10).

The second paper is an introductory overview of our findings, conclusions, and recommendations contained in the first paper. This paper is entitled, An Introductory Overview Concerning the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I, ESEA.

The third paper, entitled, A Description and Analysis of the Relationship Between Title I, ESEA and Selected State Compensatory Education Programs, describes six state programs and analyzes issues which concern the co-existence and coordination of these programs with Title I.

The fourth paper, entitled, An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act, analyzes the functions State Departments of Education are required to perform in administering Title I. This paper analyzes such issues as:

(1) do the regulations clearly set forth the SEA's scope of authority with respect to each function?

(2) should states be permitted to promulgate rules, not inconsistent with federal rules, which restrict local discretion? If so, under what circumstances?

Up until this point we have described the purpose of our project and the work products we have produced. I would now like to summarize our major findings, conclusions, and recommendations concerning

(a) the basis for, clarity and restrictiveness of the program requirements local school districts must satisfy to receive assistance under Title I (LEA program requirements);

(b) the relationship between Title I and state compensatory education programs; and

(c) the functions states must perform.

GENERAL FINDINGS AND CONCLUSIONS CONCERNING THE BASIS FOR AND CLARITY AND RESTRICTIVENESS OF THE LEA PROGRAM REQUIREMENTS

Basis for the LEA Program Requirements

In the words of the Title I statute, funds under Title I must be used to provide financial assistance to local school districts for the purpose of *expanding and improving* the educational programs of *educationally deprived children* residing in school attendance *areas* having high concentrations of children from *low-income families*. *Programs* must be *designed* to meet the *special educational needs* of these children. Each word or phrase has been given a special meaning by Congress and OE. Together, these words and phrases constitute the basic LEA program requirements of the Title I legal framework.[4]

In general, we have concluded that the basic LEA program requirements (a) specify the class of intended beneficiaries -- educationally deprived children residing in low-income areas; (b) specify the nature of Title I programs -- they must be designed to meet the special *educational* needs of such children; (c) attempt to maximize the likelihood that Title I funds will be used effectively to meet the needs of such children by requiring that programs be properly planned and designed (program planning provisions)[5] and that funds be allocated only for programs intended to provide additional services (funds allocation provisions);[6] and (d) provide a means for verifying fund and program accountability (accountability provisions).

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[4] The major LEA program requirements analyzed by the project are defined in Appendix A.

[5] The program planning provisions include: needs assessment, establishing program objectives, program design, concentration, evaluation and coordination.

[6] The funds allocation provisions include: supplement, not supplant, comparability, excess costs, equitably provided, and general aid.

The deletion of the eligibility and targeting of school attendance area and children requirements, which specify the class of intended beneficiaries, could substantially change the focus of the program. State and local Title I Directors and Coordinators explained that present funding levels for educationally deprived children in low-income areas would decrease if the mandatory focus on these children were eliminated.

The reasons identified by those interviewed include local pressures to provide special programs and assistance in more affluent areas, local pressures to use federal funds to meet priorities other than compensatory education, the present fiscal crisis facing many jurisdictions, and the concomitant resistance of citizens to tax increases. As one SEA Title I Director explained,

> Historically, the educationally deprived in poor areas do not have the political clout to require the provision of equal resources, and certainly not extra services. Title I ensures that these children will not be ignored. Most LEAs in my State, if left to their own devices would not use federal funds for compensatory education in poor areas; they would be used to counter the current fiscal crisis, whatever that crisis might be.

The Title I legal framework specifies the process LEAs must follow in planning a program: needs assessment, establishing program objectives, selecting proper strategies to accomplish objectives, concentration and coordination of resources, and providing for evaluation. These requirements attempt to maximize the likelihood that programs will accomplish their stated objectives. Each requirement responds to a separate concern. Similarly the parent involvement provisions are included to maximize the likelihood that the program will be successful.

To ensure that Title I funds are used to "expand and improve" the educational programs of educationally deprived children residing in low-income areas and to meet their "special" as opposed to regular or ordinary needs, the Title I statute and regulations have historically (a) prohibited certain types of discrimination with respect to the distribution of state and local funds and (b) required the provision of a certain minimum level of state and local support. Specifically, the Title I statute and current regulations contain the following provisions:

(1) State Aid: The state is prohibited from distributing state aid in any way which takes an LEA's Title I allocation into consideration and then penalizes the LEA in the distribution of state funds.

(2) Maintenance of Effort: Local school districts are required to maintain their fiscal effort so that they do not shift to the federal government their ongoing financial responsibilities for their educational programs.

(3) Comparability: Services provides with state and local funds (measured in terms of pupil to teacher and expenditure per pupil for instructional salaries ratios) to project area schools, i.e., schools receiving assistance under Title I, are approximately equal to services provided to non-project area schools.

(4) Equitably Provided: Services must be equitably to educationally deprived children according to objective criteria.

(5) Supplement, Not Supplant: Title I funds must be used to supplement, not supplant the level of state and local funds which, in the absence of Title I funds, would have been provided to children participating in Title I programs.

(6) Excess Costs: Title I funds will only pay for the excess costs of programs and projects.

(7) General Aid: Title I funds must be used to meet the needs of educationally deprived children and not for meeting the needs of the school or the school district, however pressing those needs may be.

Each provision is included to guard against a distinct type of discrimination in the provision of state and local funds. The deletion of any provision would allow an LEA to pursue a form of discrimination which would result in Title I funds being used for non-"supplementary" purposes and contravene the basic legislative intent.

Clarity and Restrictiveness of the Title I Legal Framework

We have concluded that OE has generally interpreted Title I in a consistent and reasonable manner. There exists at this time a body of interpretations (contained in correspondence not widely disseminated) which, if assembled, summarized, interrelated and published in the Federal Register would resolve many of the recurring questions about Title I raised by SEAs and LEAs.

Any contention that OE does not have the capacity to interpret the law in a consistent, clear, and unambiguous manner is, in our opinion, unfounded.

We have also concluded that the language of the statute is generally not restrictive with respect to the design and effective delivery of educational services to educationally deprived children residing in low-income areas. The requirements are designed to ensure

- that the intended beneficiaries actually receive the benefits,

- that the program is well-planned to best meet the needs of the intended beneficiaries, and not the needs of the school system, however pressing such needs may be, and
- that the LEA does not discriminate against areas or children receiving benefits under Title I in the provision of state and local funds and services provided in non-project areas.

The Title I requirements are minimum process standards that do not restrict the design and implementation of innovative programs for educationally deprived children residing in low-income areas. The flexibility of Title I can best be illustrated with specific examples of the types of policies and programs which Title I permits.

- An LEA may design a program under Title I which provides special services to educationally deprived children while they are in their regular classroom or the LEA may decide to provide such special instruction in a separate location (commonly referred to as a pull-out program).
- An LEA may serve educationally deprived children in all its schools where there is no wide variation in the incidence ofpoverty among the schools in the school district.
- An LEA may use its Title I funds in any grade levels it chooses. Title I is not restricted to the elementary grades.

- An LEA may phase-in a new program such as kindergarten without having to first serve all Title I project areas, so long as the program is equitably distributed throughout the system, in such a way that project areas are not penalized or discriminated against.

Although we have concluded that the regulations are internally consistent, consistent with the statute, and provide maximum flexibility, they are inadequate because they fail to take into consideration the needs of the affected audience. The adequacy of the regulations must be viewed from at least two perspectives. First, for the knowledgeable, experienced, committed person who has taken the time to develop a comprehensive policy interpreting a particular Title I requirement, the Title I regulations are clear and precise. It is a credit to these SEAs and to the general consistency of the requirements of the formal legal framework that the SEAs were able to resolve successfully certain difficult issues without additional guidance from OE. However, these individuals have spent too much of their time decoding the meaning of the standards and operative definitions set forth in the statute and regulations and in explaining these requirements to the LEAs. The primary responsibility for making such interpretations rests by law with OE. SEAs should be able to spend more time providing technical assistance as part of their application approval and monitoring responsibilities; thereby increasing the likelihood that Title I programs are well-planned, of high quality, and are designed to meet the needs of the intended beneficiaries, i.e., educationally deprived children in low-income areas.

Second, we conclude that the language of the statute and regulations is not sufficiently clear in certain respects for Title I staff who lack the time or inclination to study the law and develop comprehensive policies. A specific request by an SEA to OE for clarification of a requirement may do little since OE's individual responses have often been cryptic and assumed an understanding of OE's overall framework about which OE, itself, has generally been inscrutable. Consequently, an SEA which has not the time or inclination to develop a comprehensive Title I policy may not be able to comprehend the significance of an OE interpretation concerning a particular requirement.

In sum, OE has assumed a level of understanding by SEAs which does not uniformly exist. We have concluded that for Title I to be administered uniformly throughout the states, OE must clarify the requirements of Title I, their inter-relationships and applications in a comprehensive and understandable format and these clarifications must be set forth in the Federal Register. In this way, SEAs which have not taken the time to undertake a comprehensive analysis of the federal legal framework will neither feel insecure about issuing an interpretation, nor over-react to a perceived problem by adopting overly restrictive policies.

State Legal Frameworks

Although Title I permits great flexibility in the design of educational programs, OE has not provided SEAs with sufficient guidance about how to design a variety of programs within the Title I legal framework. Some SEAs have responded to this vacuum by developing their own flexible models for Title I programs. Other SEAs, because of their uncertainty or misconceptions about the meaning of certain requirements, have either promulgated overly restrictive policies concerning the kinds of programs Title I may fund or matched OE's lack of guidance with their own silence. This lack of clarity has not encouraged flexibility in program design; rather, it has discouraged the development of innovative programs. We have concluded that if OE had resolved and disseminated answers to persistent SEA questions concerning the legal framework, by including its interpretations in the Federal Register, many of the erroneous impressions that Title I requires programmatic rigidity would never have been formed.

In short, we have concluded that increased clarity in the formal legal framework, particularly in OE regulations, would result in greater LEA freedom to design flexible Title I programs.

GENERAL RECOMMENDATIONS CONCERNING THE BASIS FOR AND CLARITY AND RESTRICTIVENESS OF LEA PROGRAM REQUIREMENTS

Consistent with our general findings and conclusions set forth above, we make three major recommendations concerning the United States Office of Education's administration of Title I. First, we recommend that OE include, under each substantive requirement set forth in the regulations published in the Federal Register, illustrative examples of its application to commonly occurring situations. This technique is commonly used by other agencies for clarifying complex requirements.[7]

Second, a separate section entitled "interpretations," should be included in the regulations.[8] This section should be organized by subject area, rather than by requirement.

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[7] See, for example, regulations published by the Internal Revenue Service in Title 26 of the Code of Federal Regulations.

[8] Section 431 of the General Education Provisions Act now requires, among other things, that all "interpretations" be published in the Federal Register. In addition, Section 431 of the GEPA Statute presently requires that OE treat "interpretations" in the same manner as it treats substantive regulations with respect to publication in the Federal Register of a notice of proposed rule making, comment period, republication and submission to Congress. We recommend that Section 431 of GEPA be amended to require that OE "interpretations" simply be published in the Federal Register. OE should not be required to first publish their interpretations in proposed

[footnote continues]

Suggested headings include: teacher aides, support services, pull-out programs, in-class programs, desegregation, individualized instruction, inservice training, programs in open space schools, etc. The resolution of the problems arising in these areas often involves interpretation of a number of regulations. This section of the regulations should also include legal models illustrating the wide range of alternative program designs which are possible.

It should be noted that we do not recommend that the language of the existing regulations be totally discarded and less legally-based language substituted.

The language of many of the regulations has been in existence for approximately eight years. Over time, most agencies have become familiar with these terms, although they may not always understand their precise implications or application. It is our opinion that less dissonance and more clarity would result from explaining the operative definitions, concepts and standards set forth in present regulations than from totally revising the phraseology. Of course overly complex sentences in present regulations should be simplified. On several occasions such recommendations are made in our paper.

[footnote continued from previous page]

form subject to comments, republication and submission to Congress since, interpretations, unlike substantive rules, do not have the "full force and effect of law." Moreover, application of burdensome procedures to interpretations discourages rather than encourages interpretation by OE when issues need clarification. Our recommendation that OE be required simply to publish its "interpretations" in the Federal Register and not follow the procedure applicable to other substantive rules is not exceptional in any sense of the word. OE "interpretations" would then be subject to the same procedures most other Federal agencies now follow under sections 552 and 553 of the Administrative Procedures Act (5 U.S.C. 552,553).

We submit, however, that a complete revision would not be productive and would likely result in greater confusion than clarification.

Finally, we recommend that Congress *require* OE to prepare a policy manual for use by OE staff, HEWAA staff, SEAs, LEAs, and parents. The precedent for the development of a policy manual is firmly established in other agencies.[9]

The manual[10] should include, at a minimum (1) quotations of relevant sections of the Title I and GEPA statutes, (2) quotations of relevant regulations appearing in the *Code of Federal Regulations*, (3) explanations of the purpose of each requirement, with references to the legislative history, where relevant, (4) summaries of OE responses to SEA requests for interpretations, including examples of actual applications of the standards and operative definitions set forth in the regulations, (5) summaries of final decisions rendered by the HEW Audit Hearing Board,

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[9] For example, the Department of Housing and Urban Development has developed a manual explaining its Section 8 Housing Assistance program. Similarly, the Department of Labor developed a manual for administering the now repealed Welfare and Pension Plans Disclosure Act.

[10] It is our opinion that a mandate that OE prepare a manual would *not* be inconsistent with section 431 of GEPA, relating to publication in the *Federal Register*, (see *supra*.) so long as the following components of the proposed manual first appear in the *Federal Register* pursuant to the procedures of Section 431: (1) quotations of relevant regulations, (2) summaries of OE interpretations, and (3) examples of actual applications of the requirements in the regulations. The remaining components of the proposed manual, since they are not "rules, regulations, guidelines, interpretations, orders, or requirements of general applicability," need not be published in the *Federal Register*. Of course, Congress could also exempt specific components of a manual from the requirements of Section 431. We do, however, recommend that consistent with the Freedom of Information Act that OE publish in the *Federal Register* a notice that such a manual exists. (See 5 U.S.C. 552).

(6) final determinations made [illegible] concerning audits closed without reaching the Hearing Board, and (7) summaries of relevant court decrees.

The manual should be organized by requirement and by subject or topic areas, including, for example: "teacher aides", "support services", "pull-out programs", "in-class programs", "desegregation", "individualized instruction", "in-service training", "programs in open-space schools", etc.

The manual should also explain the full range of alternative program design models which LEAs may pursue and, more important, describe the kinds of records they must maintain to leave a sufficient "audit trail" which HEWAA might follow. This latter section should be prepared jointly by OE and the HEWAA.

The suggestion that a manual be developed is based on the premise, described supra, that the Title I requirements are minimum process standards which do not restrict innovative programs which are (1) of sufficient size, scope, and quality to ensure a reasonable promise of success, and (2) are designed to best meet the special educational needs of educationally deprived children. Several state manuals contain unnecessarily restrictive policies which limit LEA flexibility and go beyond the requirements of the federal legal framework.

An OE manual explaining the full range of permissible program design options would help to eliminate the constraints on local discretion which result from uncertainty about Title I requirements, rather than educational choice, and would greatly facilitate compliance with the mandate set forth in Section 431 of GEPA that all regulations be uniformly applied and enforced throughout the country.

The OE correspondence we reviewed directly suggests the feasibility of developing a manual that includes interpretations that facilitate innovation and creativity rather than discourage it.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONCERNING PARTICULAR LEA PROGRAM REQUIREMENTS

The paper prepared by the Legal Standards Project entitled, "An Analysis of the Basis for and Clarity and Restrictiveness of Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of ESEA" contains numerous recommendations for changes in the regulations and a select number of recommended statutory changes. In the following pages we will summarize (a) our major recommendations concerning amendments to the Title I statute, (b) with respect to one requirement, our rationale for not including a statutory recommendation, and (c) proposed language to be included in the legislative history directing OE to modify existing regulations.

1. Title I and Desegregation

Several state and local officials expressed the opinion that a substantial problem arises when a school district is required to desegregate its schools in the middle of the school year. The problem entails, among other things, the recomputation of school attendance areas and child eligibility and the organization of new school-level parent councils. We recommend that the statute be amended to permit the LEA, at its option, to continue the Title I programs at their present locations for the remainder of the school year so as to avoid undue hardships.

2. Schools With Substantial (80 percent) Concentrations Of Children Who Are Educationally Deprived (General Aid)

It appears that in some urban and rural school districts which are extremely poor, there are Title I schools in which 80 percent or more of the children enrolled are educationally deprived. Several SEAs and local school officials argued that it makes little sense to concentrate efforts on the design of "special" programs for 80 percent of the school population. In this situation, it is difficult if not impossible to design a program for educationally deprived children which does not also meet the needs of the school.

We recommend that the Title I statute be amended along the lines of Section 150 (permitting demonstration projects) to permit NIE or OE to study the effects of allowing Title I funds to change the entire school program under certain conditions. We would support such a study because we feel that any school with such a high concentration of children who are educationally deprived will have an extremely difficult time (a) demonstrating compliance with the general aid prohibition and the intra-school supplanting provisions and, (b) administering or over-seeing the legal operation of the program in such a school.

In this case, the question of compliance would appear to be outweighed by the practical realities of the situation, i.e., targeting 80 percent of the school population.

We recommend that the Title I statute be amended to permit an LEA to target all of the children in the school or selected grade levels where (a) at least 80 percent of a school body or at least 80 percent of the children in the grade levels that are targeted in that school have been shown to be educationally deprived by objective methods and utilizing the district-wide cut-off for participation in Title I and (b) each educationally deprived child in the school receives Title I funds in an amount consistent with the concentration requirement. For example, assume that there are 1000 children in school A; 80 percent or 800 children are considered educationally deprived. The state interprets the concentration provision as requiring that $300 of Title I funds be expended per participant. Thus, the school interested in qualifying for the exemption must receive, at a minimum, $240,000 in Title I funds (800 x $300).

In addition, the statute should require that the LEA pay for a proportional cost of the program with state or local general funds, i.e., the LEA would pay for 20 percent of the cost of the "Title I" program in a school where 80 percent of the children are educationally deprived.

We also recommend that the statute and regulations be amended to include the following conditions:

- With respect to the use of Title I funds, the LEA must still comply with all federal requirements, with the following exceptions: (1) the intra-school supplanting provisions, (2) the intra-school general aid prohibitions, and (3) the within school targeting of children provisions.
- The LEA, using supplementary state or local funds must pay its fair share of the program (e.g., if 80 percent of children are educationally deprived, the LEA's contribution is 20 percent). To ensure that the LEA's contribution does not simply replace other state and local funds that would have been provided but for the existence of this special program, all of the requirements protecting the supplementary nature of Title I funds apply with the following exceptions: (1) the intra-school supplanting provisions (see *supra*.) (2) the intra-school general aid prohibitions, (3) and the within school targeting of children provisions.
- The LEA may not use state or local compensatory education funds similar to Title I or any other special program otherwise exempt from the base under the excess costs provisions to pay for the 20 percent contribution to the special program.
- The state and local payments made under this plan *must* be *excluded* from the comparability computations.

Once it is agreed that the basic recommendation is reasonable, the conditions under which this policy should be allowed to operate must be examined.

The first recommendation set forth above is that the LEA must fund the program for all children enrolled in the school. For example, where 80 percent of the children are educationally deprived, 80 percent of the program should be funded with Title I and 20 percent with state and local funds (20 percent of the children are not considered educationally deprived).

Under the existing legal framework, Title I funds would be used to fund programs only for the 80 percent educationally deprived population. In other words, we conclude that Title I funds should only be used to fund programs for educationally deprived children, even in the situation where the program would serve all children in a school. State and local funds should pay for the participation of non-educationally deprived children.

In accordance with the concentration requirements, i.e., the design of programs must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the needs of educationally deprived children. We conclude it is unreasonable to assume that allowing an additional 20 percent of the students to participate will not dilute the effectiveness of the program.

Furthermore, we conclude that it would be unreasonable to allow the limited appropriations available under Title I to be used for non-educationally deprived children, since to do so would prevent other eligible children in the school district from participating.

In sum, Title I should only pay for the excess costs of a program, e.g., 80 percent, although in this case the dollars need not be traced down to thechild level since the program would involve changing the entire school environment.

The Title I statute contains provisions which ensure that Title I funds will be used as categorical aid for meeting the special educational needs of educationally deprived children and not to replace or make up for past and present discrimination by the LEA in the provision of state and local funds or to meet the needs of the school district, however pressing.

The first and second conditions ensure that Title I as well as the local's special contribution supplements the level of state and local funds which would have been provided but for the existence of this special "Title I" program.

Thus, the requirements set forth in the federal legal framework generally apply with respect to the special program in schools with enrollments of educationally deprived children in excess of 80 percent of the total student population. However, there are several notable exceptions.

Since the entire school population may participate, the LEA must be exempted from the targeting of children requirement which ensures that only those educationally deprived children who are in greatest need of assistance receive the benefits. In this case, the LEA is not required to "trace Title I dollars" to the targeted children, since all children are program participants.

Furthermore, the "intra-school supplanting" and "intra-school general aid prohibitions" are inapplicable. In other words, the LEA need not demonstrate that the educationally deprived children within the project school have received their fair share of state and local funds by comparing the level of state and local support provided to non-educationally deprived children attending that school. The program, using Title I and special state funds, will be designed to generally aid that school.

The above policy should not be construed as to permit the LEA from discriminating against the special project school in the provision of state and local funds. Therefore, the equitably provided and comparability provisions still apply.

Furthermore, neither the Title I funds nor the special local contribution may be used to generally aid the school district. Thus, it would still be illegal to pay for an instructional T.V. system serving the entire district, although such a system could be provided for the entire school (so long as it is not ordinarily provided in non-project areas with state and local funds).

The third condition set forth above explains that in a state which has a state or local compensatory education program similar to Title I, such funds may not be used to pay for the local's 20 percent share. The rationale for this condition is straightforward. For a program to be similar to Title I, (thereby qualifying for an exemption from comparability), the participating children must be educationally deprived, as defined in the Title I regulations. Since the children constituting the 20 percent are not educationally deprived, by definition state and local compensatory education programs similar to Title I can not be used.

Finally, with respect to comparability, just like Title I funds, the special state or local 20 percent contribution must be excluded for purposes of computing comparability. Recall that Title I funds are excluded from the comparability computation because the fundamental purpose of the provision is to ensure that the Title I services are supplementary. Similarly, the state or local share must be excluded because it supplements the services generally provided with state and local funds.

3. The Comparability Requirement

a. Economies of Scale

One major problem identified by the Project with respect to the comparability regulations concerns the existence of the so-called "economies of scale" provision. This provision was designed to add flexibility by recognizing the alleged effects of size on the distribution of services. We have concluded that the purpose of including such a provision may be meritorious (one empirical study analyzing this question raised serious question as to its applicability for explaining unequal distributions of services); however, the current provision is arbitrary and capricious allowing LEAs to defeat the very purpose of the comparability provision. Under the existing regulations, an LEA is permitted to divide schools within a particular grade span into two size groups if student enrollment in any school is twice as great as the enrollment in another school. Once it can be shown that one school has twice the enrollment of a second school it may divide the grade span group at any point on the continuum. Thus, the current provision would allow the following result, notwithstanding the fact that its purpose is to enable LEAs to compare schools of similar size, not to avoid demonstrating comparability.

Title I Schools	Non-Title I Schools
800	799
800	799
800	400

In accordance with the regulations the LEA could choose 799 as the cut-off point between "large" and "small" schools. As a result, this school district would be exempted from demonstrating comparability since there are no non-Title I schools with 800 children or more which may be compared with the Title I schools, all of which have 800 children.

We recommend that if economies of scale is deemed to be a legitimate factor, the legislative history indicates that the existing regulation contravenes the legislation and that OE consider alternative policies, for example, the use of a weighting factor so that the LEA will still be required to demonstrate comparability even if there are no non-Title I schools in the same size category as the Title I schools.

b. Alternatives to the Existing Criteria

The Legal Standards Project concluded that the existing criteria for measuring comparability are consistent with the legislative history. In fact the criteria are less exhaustive than what the legislative history would seem to require. (It is important to note that the criteria for measuring comparability have been reduced from five ratios to three and more recently to two.) Since the question of whether the comparability ratios interfere with the development of innovative staffing patterns, as some LEA personnel suggested in our interviews, is an empirical question requiring specific study, it is beyond the scope of our study. Our responsibility was to determine whether the regulations required more than is necessary to satisfy the legislative intent. We have concluded that they do not. However, we recommend that Congress authorize OE or NIE to study the efficacy of using alternative criteria for demonstrating comparability by allowing a select number of LEAs to develop and employ such alternatives.

In analyzing the merits of allowing LEAs or SEAs to develop alternative criteria for measuring comparability, the following issues should be considered.

- Does the empirical data showing that an LEA is able to comply with alternative criteria, also show that the LEA is unable to comply with the existing criteria or is the problem more hypothetical than real?
- Does dollar equality provide equality in the instructional services provided to children?

- Assuming that the empirical data show that alternative schemes are relatively more flexible, should OE nonetheless not permit alternative schemes given the central importance of comparability in ensuring that project participants receive supplementary services and the potential increased administrative problems, which might result in any monitoring effort?
- Should any alternative scheme proposed still be required to demonstrate as of a point in time that actual services provided in each project area school are comparable to non-project area schools?

We recommend that OE allow an alternative scheme only if

(1) the empirical data shows that there is in fact a significant problem in compliance with the existing criteria;

(2) under the alternative scheme, even if based on formula allocation, the LEA must still demonstrate that, as of a given point in time, the actual services are comparable (estimates or proposed expenditures should be unacceptable);

(3) the state or local allocation scheme ensures that instructional services are, at a minimum, comparable. A formula allocation of dollars would not automatically be sufficient;

(4) any increased problems in the effective oversight by SEAs and HEW associated with the use of different schemes rather than one uniform reporting form are minimal;

(5) the LEAs are required to report under both schemes for a number of years so that empirical studies can be made concerning its effect on comparability.

4. Pull-Out Programs and the Title I Supplement, Not Supplant Provision

A significant issue respecting Title I is whether the statute or regulations require or encourage the design of separate remedial classes for children receiving services under Title I ("pull-out" classes). It is our conclusion that the Title I statute and regulations neither require nor encourage the "pull-out" design.

The provisions explain, given a decision by the LEA concerning which design it wishes to pursue, whether Title I versus state and local funds should pay for a component of the program. If the program component is supplementary, Title I pays; if the component is part of the regular instruction which all other children receive as a matter of course, state and local funds must be used.

To say that Title I does not require, e.g., pull-out programs, is not sufficient. Several states have in the past mandated pull-outs out of fear of audits. To alleviate these fears, OE must affirmatively set forth in the regulations legal non-supplantive models, including pull-out and in-class options. To an extent OE has already developed these models and several states have communicated the models to their LEAs. However, these models are not widely disseminated. They are not published in the *Federal Register*.

With respect to the question of Title I, pull-out programs and stigma, state Title I Directors expressed varying opinions. Some felt it was a problem; others felt the issue had been blown out of proportion. Selected responses are set forth below.

(a) Title I pull-out programs have the effect of stigmatizing participating children;

(b) "Stigma" is a catch word used by people who want to convert Title I into a block grant program;

(c) "Stigma" was a problem in the early days of Title I when kids were pulled- out but were not provided additional services; today kids are receiving extra services and other parents are knocking on the door to get their kids these extra services;

(d) Better be "stigmatized" today and learn how to read than to be stigmatized for the rest of your life because you can't read;

(e) Stigma results where teachers communicate to the program participants that they are inferior;

(f) Kids know who is smart and who isn't regardless of whether in-class or out-of-class--Title I does not add anything.

We recommend that the Title I statute not be modified; rather we recommend that OE regulations expressly explain (a) Title I is neutral with respect to the particular instructional strategies chosen by LEAs, (b) set forth legal non-supplantive models, and (c) describe what would constitute a sufficient "audit trail". To an extent OE has already developed these models. However, these models (which appear in correspondence) have not been widely disseminated.

GENERAL FINDINGS AND CONCLUSIONS CONCERNING THE RELATIONSHIP BETWEEN TITLE I AND SELECTED STATE COMPENSATORY EDUCATION PROGRAMS

Introduction

The coexistence of the Title I and State Compensatory Education (SCE) legal frameworks raises two fundamental issues. First, does the Title I legal framework restrict the development and implementation of SCE programs? Second, is the Title I legal framework, as it pertains to SCE programs sufficiently clear?

We have generally concluded that the basic problems concerning the restrictiveness of the Title I legal framework were successfully solved by the Education Amendments of 1974. The present legal framework does not interfere with the implementation of SCE programs.[11] States and LEAs have substantial flexibility in the design and implementation of their own programs without conflicting with any of the Title I requirements.

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[11] There are two exceptions to this conclusion. First, a basic problem continues to exist with the implementation of phase-in programs which generally aid an entire school. This is because unlike SCE programs, programs which generally aid all children in a particular school or grade do not qualify for an exemption from the comparability provision. Thus, a program like California's Early Childhood Education Program, which is designed to restructure the entire school environment in grades K-3 does not qualify for an exemption. This issue is analyzed *infra*. Second, the 1974 Amendments fail to provide for circumstances where exceedingly large sums of SCE funds are available. This issue is summarized *infra*.

However, the Legal Standards Project concluded that the language of the legal framework does not take into consideration the needs of its audience -- as a result several state and local coordinators did not understand the full range of acceptable and unacceptable practices under Title I.

In reaching these conclusions, the Legal Standards Project analyzed, among other things, the relationship between SCE programs and the Title I requirements pertaining to comparability, supplement, not supplant, equitably provided and coordination.[12] The following paragraphs summarize the Project's findings with respect to each of these requirements.

The Major Problems Concerning the Restrictiveness of the Title I Legal Framework Were Successfully Solved by the 1974 Education Amendments

Title I funds must be focused on meeting the special educational needs of educationally deprived children residing in areas having high concentrations of children from low-income families. Thus, "Title I areas" are areas with high concentrations of children from low-income families.

Prior to the enactment of the Education Amendments of 1974, an LEA desiring to use substantial amounts of state or local funds to provide compensatory education services similar to those provided by Title I probably had to provide SCE services in all Title I areas before they could be provided in non-Title I areas.[13] The Title I comparability requirement generally provides that each Title I school must receive, at a

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12 / In addition to analyzing these requirements, the paper analyzes the relationship between SCE programs and the following Title I requirements: school attendance area and children eligibility and targeting, parent involvement and private schools.

13 / This proposition is based on the premise that the LEA has distributed services paid for out of state and local base funds on a comparable basis.

minimum, services, which are comparable to services provided to the non-Title I average. Thus, the provision of substantial SCE services in non-Title I areas would raise the average level of expenditures in those areas; any Title I area that did not also receive the SCE services would probably not meet that level of expenditure and a violation of the Title I comparability requirement would result. This policy was restrictive in the sense that the purpose of the Title I comparability provision is to ensure that Title I areas are not discriminated against in the provision of a specified level of base services. The comparability provision prior to 1974, not only prohibited penalization; it also had the effect of requiring LEAs to favor low-income areas in the distribution of SCE funds. In many cases, such a requirement was inconsistent with state initiatives which were designed to meet the needs of all educationally deprived children in the district, irrespective of their residency in low-income areas.

Under the Education Amendments of 1974, an LEA, among other things, is permitted to exclude from its comparability computations, expenditures for "comparable state or local special programs for educationally deprived children."

The major effect of this statutory amendment is that LEAs no longer must favor low-income areas receiving assistance under Title I. The regulations implementing this statutory provision provide for substantial flexibility with respect to the design of SCE programs which may qualify for the exemption.

To qualify for an exemption from comparability, SCE programs need not be identical to Title I, they must only be similar.[14] Thus, SCE programs, unlike Title I programs, do not have to serve only low-income areas; they do not have to serve those children who are furthest behind; and they do not have to include parent involvement or teacher-aid training requirements.

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[14] The Title I regulations include four criteria for determining whether an SCE program qulaifies for the exemption. First, the funds must be used for educationally deprived children. Second, the funds must be used for a program that is evaluated. Third, the SCE funds must be used for special, supplementary purposes. Fourth, the LEA must be accountable to the SEA for compliance with the first three requirements.

The supplement, not supplant and equitably provided provisions, like the comparability provisions (as modified by the 1974 Education Amendments), do not require LEAs to favor low-income areas with respect to the distribution of SCE funds. They encourage states and LEAs to provide SCE programs to educationally deprived children both (a) who live in Title I eligible areas but are not served because of insufficient Title I funds and (b) who live in ineligible areas. Supplement, not supplant and "equitably provided" simply require that educationally deprived children residing in low-income areas, as a group, receive their fair share of SCE funds in accordance with objective, non-discriminatory criteria established by the state or the LEA.

Because Title I is not fully funded, many educationally disadvantaged children in low-income areas receive no Title I services. Without these requirements, SCE programs could ignore completely these unserved children and could serve only children in areas not eligible for Title I programs.

The supplement, not supplant and equitably provided requirements assure that a state or LEA does not discriminate against such children in the provision of supplementary programs to educationally disadvantaged children. These requirements do not demand that SCE programs serve the same children or have the same objectives as Title I, but they do require accommodation of a primary goal of Title I: providing supplementary services for educationally disadvantaged children residing in low-income areas. Title I was not intended to provide merely those services educationally disadvantaged children would have received from SCE programs if Title I did not exist.

The Legal Standards Project concluded that the supplement, not supplant provision could be satisfied through numerous alternative funding methods. For example: an LEA might distribute SCE funds according to the number of educationally deprived children enrolled in each school. Then schools which also qualify for assistance under Title I could be skipped if the SCE program provides educationally deprived children in those schools services of the same nature and scope as Title I would have provided. Title I funds could then be used in other schools eligible for Title I. Other alternatives include: providing an equitable proportion of SCE funds to educationally deprived children residing in Title I as well as non-Title I areas according to objective criteria or using SCE funds, again according to objective criteria, to meet the needs of all educationally deprived children in a particular grade span, e.g., K-6, while using Title I funds in a different grade span, e.g., 7-12.

Whereas the supplement, not supplant and equitably provided provisions generally operate in a non-restrictive fashion, there is one exceptional situation where the provisions may be overly restrictive, resulting in a disincentive to further increase the level of SCE funding. While the current Title I legal framework offers an incentive for LEAs to implement SCE programs, the incentive may disappear due to the operation of the two provisions at high SCE expenditure levels. At some point, states and LEAs may feel a disincentive to continue the growth of their SCE programs.

In our view, this point occurs when the combined level of SCE and Title I funds employed in Title I areas of an LEA reaches a level equal to that authorized (as opposed to appropriated) by Congress for Title I in that LEA. At this level the continued application of the supplement, not supplant and equitable distribution requirements means that an LEA must use amounts of SCE funds in Title I areas, which when combined with the Title I funds in those areas, exceed the level of funds which the federal government, itself, is willing to authorize for compensatory education.

This is a practical and objectively-measureable point at which, from a policy perspective, states and LEAs may feel that the federal government is asking them to do more for Title I areas than Congress, itself, has determined should be done. Thus, states and LEAs may, for this reason, feel a disincentive to increase the growth of their SCE programs.

The Title I coordination requirement prohibits LEAs from commingling Title I and SCE funds. This ensures that OE will be able to determine whether Title I funds are being expended properly. However, the coordination requirement does not prevent LEAs from using SCE and Title I funds simultaneously. OE has described five methods for pursuing a comprehensive planning approach.[15] The five methods reflect different ways of varying two factors -- children served and services provided. Under two methods, Title I and SCE funds provide different services to the same children -- either different programs or different components of the same program. Under the other three methods, Title I and SCE funds serve different children -- either different grade levels, different groups predetermined according to some factor other than grade level or different schools. These methods permit substantial flexibility in coordinating Title I and SCE funds and programs.

Although the Title I Statute and Regulations Generally Lack Sufficient Clarity, the Informal Legal Framework is Sufficiently Clear

The paragraphs above outline the Project's general findings and conclusions regarding the degree of flexibility of the Title I legal framework. Unfortunately, we have found that the statute and regulations, by themselves do not adequately set forth these terms. The formal federal legal framework (the statute and regulations) do not explain with sufficient clarity the range of acceptable and unacceptable practices and policies which LEAs receiving SCE funds may pursue. The formal legal framework simply prescribes in general terms the standards and operative definitions controlling the operation of SCE programs; it does not explain how these general principles are to be applied in commonly occurring situations. In certain situations the standards are not even explicit: they must be gleaned from a perusal of several Title I requirements.[16]

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[15] Unfortunately OE has not widely disseminated these methods.

OE, however, has already clarified many of the difficult issues in correspondence with SEAs. For example, (a) the circumstances under which an SEA may develop a consolidated application and allow its LEAs to undertake a comprehensive approach to the planning and implementation of Title I and SCE programs; (b) the application of the requirement that SCE funds be equitably distributed in accordance with objective criteria; and (c) five models explaining the circumstances under which an LEA may joint fund a compensatory education program from Title I and SCE sources.

While OE has generally interpreted those provisions in the Title I legal framework pertaining to SCE programs in a clear, consistent, and non-restrictive manner, it has not widely disseminated its explanations to the persons responsible for administering and overseeing programs.

As explained *supra*, Title I permits substantial flexibility in the design and implementation of SCE programs (and with minor changes suggested by the Project would permit even greater flexibility), but OE has not provided all SEAs and LEAs with sufficient guidance concerning how to apply basic principles of the Title I statute and regulations.

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[16] See, e.g., our discussion of the Title I coordination requirements and the OE policies concerning the simultaneous use of Title I and SCE funds and the restrictions against commingling.

The lack of clarity in the regulations and OE's failure to widely disseminate its clarifying interpretations has not encouraged flexibility in the coordination of Title I and SCE programs.

If OE's answers to persistent SEA questions concerning the application of requirements in the Title I legal framework to SCE programs had been disseminated in the Federal Register, it is our opinion that many of the erroneous impressions -- such as the impression that Title I requires the design of SCE programs identical in all respects to Title I programs -- would never have been formed.

OE's failure to widely disseminate its own interpretations is not just an administrative error, it is an omission contrary to the General Education Provisions Act (GEPA), which presently requires, among other things, that OE publish its interpretations in the Federal Register.

STATUTORY RECOMMENDATIONS

a. Introduction--The Project makes three types of recommendations. First, we recommend that the statute be amended to clarify existing policy (clarifying amendments). Second, we recommend that several changes be made to the existing statute to provide additional flexibility to LEAs (substantive amendments). Finally, we describe a situation which Congress may wish to consider during its deliberations, without recommending that the statute be amended to address the issue raised. To the extent Congress wishes to address the question, we include minimum standards which we propose should be included in the legislation (amendments for consideration and possible adoption).

b. Clarifying Amendments

(1) Comparability--The current statutory authority allowing an LEA, at its discretion, to exclude (from Title I comparability computations) expenditures made under a similar SCE program, is the proviso included in the definition of "excess costs". This provision does not include an express

reference to the relationship between excess costs and comparability.

Though this relationship is clarified in the legislative history, several SEAs indicated during our interviews that they did not understand how the excess costs proviso granted them discretion to exclude similar SCE expenditures from Title I comparability computations. We recommend that the proviso explaining the exception for SCE funds be added directly to Section 141(a)(3), which contains the comparability provision. The new subsection should specify that state and local funds expended for special programs for educationally deprived children similar to Title I, may, at the LEA's option, be excluded from determinations under the comparability provision, so long as the LEA satisfies the requirements for similar programs established by OE. [17]

This change would clarify the purpose of the exception and emphasize the importance of OE regulations defining the precise circumstances under which the exemption is allowed.

(2) Supplement, Not Supplant--The supplement, not supplant provision set forth in the statute provides that LEAs must supplement, not supplant the level of funds that would, in the absence of Title I, be made available to educationally deprived children residing in low-income areas participating in Title I programs. Similarly, the equitably provided provision requires that SCE services be distributed without regard to the availability of Title I funds.

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[17] By retaining the optional policy, LEAs which choose to use SCE funds in all their Title I schools would be allowed to include such expenditures. By treating this expenditure like base state and local expenditures, the Title I schools may substantially exceed the minimum equalization required by the comparability ratios. Of course an LEA must decide to include or exclude SCE funds on a uniform basis. It cannot include SCE funds in Title I areas and exclude such funds in non-Title I areas.

One interpretation of the underlined phrases in the previous sentences is that under no circumstances may an LEA take into consideration the existence of Title I in distributing SCE funds. OE has interpreted these provisions to prohibit LEAs from taking into consideration the existence of Title I funds where such a practice has the effect of discriminating or penalizing educationally deprived children residing in low-income areas with respect to the distribution of SCE funds. If no penalization occurs, the LEA may take into consideration the existence of Title I in designing a coordinated program.

We recommend that the statute be clarified by an amendment which would provide that notwithstanding Section 141(a)(3)(B) of Title I (the supplement, not supplant requirement) an LEA, at its option, may take into consideration the existence of Title I funds in distributing SCE funds; provided that (a) state and local special program funds for educationally deprived children are distributed according to objective criteria, (b) educationally deprived children, taken as a whole, who reside in low-income areas are not penalized in the distribution of such funds and, at a minimum, such funds are equitably provided to such children and (c) educationally deprived children residing in low-income areas who are or would have been considered program participants under Title I, but for the existence of the SCE program, receive the same nature and scope of services under the SCE program as would otherwise have been provided under Title I.

c. Substantive Amendments

(1) Comparability--Improper use of the SCE comparability exemption entails potentially serious consequences. If funds are found to have been improperly excluded from comparability computations, i.e., the LEA fails to satisfy the criteria set forth in the regulations (see supra.) the

comparability ratios must be recomputed. If the recomputation indicates a comparability violation, the LEA must be deemed to have been out of compliance since the inception of the program. The consequence of non-compliance is total ineligibility for Title I funding. 18/

Because these consequences are serious, it is important that proper determinations concerning the SCE comparability exemption be made prior to the expenditure of Title I funds. First, we recommend that the statute mandate that OE establish a procedure by which SEAs may seek federal certification that an SCE program, as legislated, has the four characteristics necessary to qualify for the comparability exemption. 19/ In any case in which OE refuses to certify a program as similar to Title I, OE should explain, in writing, the specific reasons why the SCE program fails to meet one or more of the four requirements.

Second, we recommend that LEAs desiring to invoke the SCE comparability exemption be required to submit descriptions of their SCE programs which are sufficiently detailed to enable the SEA to certify that, if the programs are implemented as designed, they will meet all requirements for exclusion for comparability computations. On the basis of this analysis the SEA Title I staff should be required to expressly approve or disapprove the request for exemption.

(2) Coordination (Commingling Requirement)--Under a SCE program which is identical in every respect to Title I the question is raised whether the commingling requirements must be satisfied by the LEA?

18/ 45 C.F.R. §116.26(k)(1974); §116a.26(a), 41 FR 42923 (September 28, 1976).

19/ Of course, the SEA must also determine that the funds in an SCE program which qualify as legislated are used in a manner that satisfies the conditions of Title I.

We conclude and recommend that an SEA or LEA which uses SCE funds to design and implement a single compensatory education program which satisfies all Title I requirements be exempt from the prohibitions against commingling.

In this situation it is not necessary to trace or be able to differentiate between Title I and SCE funds because all SCE funds are to be used for the same areas, children, and programs provided for under Title I, and the program satisfies all Title I requirements.

Under the proposed exemption, to the extent HEW auditors find that compensatory education funds have been mis-expended, we recommend that the federal government seek repayment in proportion to its contribution. For example, if Title I funds constitute 90 percent of the total expenditure for the joint SCE and Title I program and HEW auditors find that $1,000 have been misspent, the LEA must repay the federal government $900.00.

(3) Supplement, Not Supplant (LEAs Expending Substantial Sums of State or Local Funds for Compensatory Education Programs)--On page 32 supra, we explained that the supplement, not supplant and equitably provided requirements operate to ensure that SCE funds are used to provide supplementary services not only to educationally disadvantaged children in areas ineligible to receive Title I funds, but also to children who are eligible to receive Title I funds, but do not receive them because Title I is under-funded. However, when the total amount of Title I and SCE funds is sufficient to provide an "optimally sufficient" program for all Title I eligible children, the further application of the supplement, not supplant and equitably provided requirements means that Title I children will receive a program that is above this level and other educationally disadvantaged children not

residing in eligible areas will be funded below this level. The practical effect of this may be to provide a disincentive for states and LEAs to increase SCE funding, once the amounts of Title I and SCE funds used in Title I eligible areas reaches this level.

In fashioning a recommendation the question remains whether it is possible to objectively define an "optimally sufficient" program? We profess no expertise concerning what levels of funds and services would provide a program so well funded that additional funds could not be effectively used to enhance the educational opportunities of educationally disadvantaged children. We are aware of no body of information which would enable this level of optimal sufficiency to be determined. [20] Nor are we aware of states or school districts which claim to provide this level for all educationally deprived children. This level of optimal sufficiency may be substantially higher than the program level provided in any school district. However, we need not resolve this issue since the purpose of this example is simply to illustrate a problem resulting from the application of the supplement, not supplant and equitably provided requirements when an LEA's combined SCE and Title I funds approach this level of sufficiency, wherever the threshold may be.

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[20] Moreover, since costs and program differ among schools, districts and states, and "educationally disadvantaged children" have a wide range of different problems, no single dollar figure per pupil or ratio of supplementary funds to base funds is likely to reflect this level for all children or groups of children.

Since we doubt that the tools exist to establish such a level beyond dispute, we are not particularly concerned that an LEA, because of the supplement, not supplant and equitably pyovided clauses would be required to provide Title I children with funds in excess of the amount necessary to provide a program of "optimal sufficiency." We are more concerned that at some point an LEA or state may feel a disincentive to increase outlays further for SCE programs, due to the fund distribution requirements of these clauses. The points at which different states and LEAs may begin to feel this disincentive will be as varied as the different opinions educators might have concerning the level of funds needed to provide an optimally sufficient program. Given the uncertainty of any measure of an optimally sufficient program, but given the desire of Congress to encourage growth of SCE programs, at which point should federal policy recognize the existence of a growth disincentive and include express provisions to counteract it?

In our view, this point should be when the combined level of SCE and Title I funds employed in the Title I areas of an LEA reaches a level equal to that authorized [21] by Congress for Title I in that LEA. At that point the continued application of the supplement, not supplant and equitable distribution requirements means that an LEA must use amounts of SCE funds in Title I areas, which when combined with the Title I funds in those areas, exceed the level of funds which the federal government, itself, is willing to authorize for compensatory education in those areas. This is a practical point at which, from a policy perspective, states and LEAs may feel that the federal government is asking them to do more for Title I areas than Congress, itself, has determined should be done. Thus, states and LEAs may, for this reason, feel a disincentive to increase the growth of their SCE programs.

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[21] Not the amount actually appropriated, but the amount authorized to be appropriated.

We do not suggest that the Congressional authorization for Title I can be empirically validated as providing an optimally sufficient education for educationally deprived children. Our selection of this standard is based on the policy considerations stated above and the recognition that at some point there is a need for a federal provision counteracting the disincentive states and LEAs may feel.

Thus, we recommend that once the total of SCE and Title I funds used in Title I eligible areas reaches the level of the fully funded Title I authorization, the LEA should be exempt from the supplement, not supplant and equitably provided requirements with respect to the distribution of additional SCE funds used to bring supplementary programs in non-Title I areas up to this same level (measured by dollars per educationally deprived child served by the supplementary program in Title I eligible areas), 22/ Above this level of supplementary funds per pupil, SCE funds would again, be subject to the supplement, not supplant and equitably provided requirements.

Our recommendation for an exemption from the supplement, not supplant and equitably provided clauses is based on Title I's long history of underfunding and the incentive

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22/ Of course, new provisions implementing this exemption should include standards which ensure that the state funds deemed to qualify an LEA for this exemption are in fact SCE funds providing services "comparable" to Title I. The standards necessary to accomplish this result are discussed in Chapter 7 of the paper. Also, the procedures we recommend in Chapter 7 for ensuring compliance with these standards are fully applicable to our recommendation here and should be so applied. In passing, we should also note that the LEA should not be exempt from Title I comparability requirements. Only the SCE funds should be excluded from comparability computations (see Chapter 7). Other state and local funds and services should continue to be subject to comparability requirements to ensure that no discrimination in base funding occurs.

this recommendation would create for states and LEAs to close the gap between amounts appropriated and authorized for Title I. At such time as Title I is fully funded, or nearly so, this incentive will no longer be needed, and should be reviewed, [23] and probably terminated since full funding of Title I would eliminate the justification for our proposal (Our proposal's effect at that point would be solely to encourage states and LEAs to discriminate against Title I eligible children in the allocation of SCE funds.)

Because this exemption is designed as an incentive to fund supplementary programs in non-Title I areas at the same level that Title I if fully funded, would provide in Title I areas, once this level is achieved in non-Title I areas, no further exemption is warranted. Exempting SCE funds above the level specified in the previous sentence would permit an LEA to discriminate against Title I areas by providing a higher level of supplemental services to non-Title I areas. Consequently our recommended exemption terminates at the point that SCE funds provide supplementary services in non-Title I areas at the same level that Title I, if fully funded, would provide per served pupil in Title I eligible areas. Additional SCE funds would be subject to the supplement, not supplant and equitably provided requirements.

Also, if our proposed exception to these requirements were continued when Title I is fully funded, it would have the deleterious effect of encouraging LEAs to take funds from the base and use these in SCE programs that serve only children ineligible for Title I services -- an effect which the equitably provided, supplanting and comparability requirements are designed to prevent.

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[23] This would include an examination of the need for funds above the level of Title I's authorization for educationally deprived children.

d. Amendments For Consideration and Possible Adoption

Under the present legal framework, exemptions from the comparability program are granted for (a) state and local compensatory education programs, (b) bilingual programs, and (c) special education programs. There is no exemption for a phase-in program, like California's Early Childhood Education Program which generally aids the entire school (grades K-3) by facilitating restructuring of the school. Such programs face the same types of problems encountered by SCE programs prior to the 1974 Education Amendments (see supra). Before Congress grants an exemption for programs like ECE, close scrutiny should be applied. The reason is that such programs share an important characteristic with general aid funds -- all children can benefit from them. Before granting a new exemption for any underfunded program of this kind, Congress should require convincing demonstration of the reasons why they are not simply disguised, unequally distributed general aid. If the program is a "reform movement," Congress should ask why the reforms can only be accomplished by special new funds rather than simply changed use of regular funds. Congress should also inquire whether evidence indicates that the reforms are as beneficial to educationally deprived children as other children and whether the reforms tend to exacerbate the achievement differences between them. After considering these and other questions, such as the length of time the program will be underfunded and the percentage of the educationally deprived children eligible for the program that will actually participate during the period of underfunding, Congress should only legislate new exemptions that are tailored to closely fit the demonstrated need. This would ensure that an unintended loophole is not created.

Should Congress wish to expand the existing comparability exemption to accommodate the ECE philosophy, an exemption for programs with the following characteristics could be drafted:

> (1) there must be a clearly identifiable program established pursuant to state law;
>
> (2) the program must provide supplementary services, be based on performance objectives related to educational achievement and be evaluated;
>
> (3) the program must implement the philosophy that either all children in a particular school *should be equally served*, or none should;
>
> (4) the program will be phased into full operation in all schools within three years;
>
> (5) during the phase-in period the percentage of the program participants who are educationally deprived will always be at least as high as the percentage of educationally deprived children in the district as a whole; and
>
> (6) the LEA is separately accountable to the SEA for compliance with the requirements contained in the state law and implementing regulations and guidelines.

As stated earlier, other questions should be addressed before a comparability exemption for programs like ECE is finally legislated. Exploration of these questions may reveal other characteristics which the programs should have in order to be exempt.

GENERAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONCERNING THE INTERRELATEDNESS, CLARITY, AND SUFFICIENCY OF THE LEGAL FRAMEWORK FOR STATE ADMINISTRATION OF TITLE I

Interrelatedness of SEA Functions

The Legal Standards Project concluded that the federal legal framework for state administration contains the basic requirements for an interrelated system of SEA functions. However, the interrelationships among SEA functions are not always fully developed in the federal legal framework. For example, in practice, application approval at the state level should interrelate with several other SEA functions, e.g., monitoring, auditing, enforcement, evaluation and rule making.

With respect to the connection between application approval and monitoring, auditing, and enforcement, the SEA has an opportunity, before approving the application, to review monitoring and audit reports concerning the LEA submitting the application. If these reports indicate that the LEA has not corrected programmatic violations or has not made arrangements to reimburse Title I misexpenditures, then the SEA has an opportunity to require that the LEA do so before the SEA approves the application. However, the federal legal framework does not indicate that SEAs should take such steps. Thus, it is possible for SEAs to approve applications from LEAs which may not have corrected past violations or which may not have paid back misspent funds.

Evaluation is also related to application approval because SEAs can consider the results of past LEA evaluations during the application review process. The extent to which SEAs do this can influence SEA decisions concerning the unmodified continuation of projects that evaluations suggest are not meeting their objectives. Yet the federal legal framework does not clarify the relationship between SEA application approval and LEA evaluations.

SEA rulemaking is also related to application approval because OE has indicated in correspondence and outdated handbooks that SEAs can promulgate additional criteria, not inconsistent with Title I, for the approval of LEA applications. Such additional criteria can emphasize increased program quality rather than minimal compliance with LEA program requirements or can emphasize independent state objectives, e.g., a focus on early childhood education. However, the regulations are silent about the extent to which SEAs may do this.

Although the federal legal framework contains the basic requirements for an interrelated system of SEA functions, we have concluded that the federal legal framework does not fully develop the connections between application approval and certain other SEA functions. Similar conclusions were reached about the interrelationships between other SEA functions, e.g., monitoring and auditing; enforcement and monitoring; audit resolution and enforcement.

Clarity and Sufficiency of SEA Functions

The Legal Standards Project generally concluded that certain SEA responsibilities are not set forth with adequate clarity and sufficiency to prevent widely varying state interpretations. These conclusions can be divided into three categories: (1) implied SEA authority in the federal legal framework has produced widely varying SEA policies; (2) the federal legal framework does not always adequately clarify the scope of some SEA functions; and (3) the federal legal framework does not always set forth sufficient standards for certain aspects of some SEA functions.

Implied authority in the federal legal framework has resulted in widely varying SEA policies in such areas as rule making, enforcement, withholding or suspension of funds, and recoupment of misspent funds.

Several SEAs indicated that if OE wanted them to perform a particular function, then the regulations should clearly and expressly reflect the requirement. One state Title I Director stated that

> It is difficult to administer any federal program, especially Title I. LEAs are constantly saying to us, "Whose side are you on?" When there is an express statement of a requirement in the regulations, we can point to it and say that we are only complying with federal laws. However, where our authority is not clear, we are often unable to do anything even though we think Title I requires it. If OE wants us to do something they should come right out and say so clearly in the regulations.

The lack of clarity in the scope of some SEA functions involved such areas as the scope of SEA rule making and auditing. In the area of rule making, we found that some SEAs have developed state policies which unnecessarily restrict an LEA's program design options. In the area of auditing, we found that several SEAs are uncertain about the extent to which audits should be compliance, as well as fiscal audits.

The lack of standards for some aspects of SEA functions was especially apparent in the area of monitoring, auditing, and audit resolution. This had led to widely varying SEA monitoring, auditing, and audit resolution policies.

The State Legal Frameworks

In general, we have concluded that state legal frameworks for state administration of Title I often reflect the lack of interrelatedness, clarity and sufficiency found in the federal legal framework for state administration. In addition, we have concluded that the state legal framework for state administration of Title I must be viewed in the context of intergovernmental relationships between HEW/OE and SEAs and between SEAs and LEAs. Two general findings led to this conclusion. First, the content of the state legal framework in several SEAs included in the study appears to have been influenced by OE Review Team Reports and HEW Audit Agency reports. Second, the content of the state legal framework in several SEAs appears to have been influenced by a tradition of LEA autonomy and local control of education.

We have also concluded that the state legal frameworks vary widely in quality and comprehensiveness from state to state and from function to function. For example, in many of the states not all the SEA functions and/or all aspects of a particular SEA function were interpreted. Thus, one state which developed comprehensive policies and procedures explaining application approval did not develop comprehensive policies or procedures for audit resolution or complaint resolution. A second state developed comprehensive policies and procedures for monitoring and application approval, but virtually no state policies or procedures for enforcement.

RECOMMENDATIONS CONCERNING REQUIREMENTS APPLICABLE TO STATE ADMINISTRATION OF TITLE I

1. Introduction

Many of the Project's recommendations concerning particular SEA functions could be implemented through amendments to regulations. In such cases, we have generally recommended that regulations be amended to accomplish this. However, it is equally clear that some of these recommendations could be implemented through statutory amendments. It is possible that Congress may determine that statutory amendments are a more appropriate means of resolving certain issues that have not been fully clarified through regulations.

The detailed analysis of these requirements is presented in part III of the paper referred to supra, entitled, "An Analysis of the Legal Framework for State Administration of Title I of the Elementary and Secondary Education Act."

2. Rule Making

The regulations are somewhat unclear concerning the circumstances under which SEAs may issue state Title I rules and regulations. Authority for SEA rule making can be implied from the regulations (it is express only with respect to parent involvement). In addition, OE has indicated in correspondence and now outdated handbooks that SEAs may issue State Title I rules and regulations which are not inconsistent with Title I.

Implied authority for SEA rule making has produced a situation where some states refrain from an active rule making role because of the lack of clarity in the regulations. Other SEAs have developed policies which impose additional criteria or standards, not inconsistent with Title I, for the approval of applications.

The regulations do not directly address the scope of SEA rule making. They are silent about the extent to which SEAs may develop rules or policies which might (a) legitimately encourage maximum flexibility by clarifying but not restricting LEA choices or (b) overly restrict program design options as a result of conscious policy choices or misinterpretations of the federal framework. Some SEAs have developed policies which restrict LEAs. Where this has happened it has usually been (a) as a reaction to a lack of clarity in the federal legal framework; (b) as protection against audit exceptions; or (c) as a matter of educational policy.

We recommend that the Title I statute (or regulations) governing SEA rule making be amended (1) to authorize the SEA to promulgate additional criteria, not inconsistent with Title I (2) to require SEAs to widely disseminate any such criteria to LEAs for their guidance; (3) to authorize SEAs to apply any such criteria to the approval of LEA applications; and (4) to require OE, as part of its monitoring responsibilities, to review any such additional criteria and to render a written opinion as to their consistency with Title I requirements.

3. Technical Assistance

The Title I statute addresses the SEA technical assistance function solely in the context of evaluation. However, the legislative history clearly indicates that Congress did not intend to limit SEA technical assistance to evaluation. The legislative history shows that SEA technical assistance should provide LEAs with expertise to improve the quality of Title I programs. The Senate Committee on Labor and Public Welfare stated in its 1970 report that

> As a rule, [LEAs] rely on the [SEAs] for expertise and guidance in meeting the requirements of the law. Since Title I makes funds available for state administration of the program, the [SEAs] can and should assist [LEAs] in planning, developing and evaluating Title I programs and projects. 24/

We recommend that the Title I statute (and regulations) be amended to reflect the wide range of areas in which technical assistance may be provided, with special emphasis on improving the quality of management procedures, program planning, program content, evaluation, preparation for the following year's application, and program implementation.

We recommend that the Title I statute (and regulations) be amended to require SEAs to develop effective procedures for disseminating to LEAs (1) significant results of relevant educational research; (2) information about successful Title I projects; and (3) such other information as would assist LEAs in planning, developing and implementing Title I programs.

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24 / S. Rep. No. 91-634 U.S. Code Cong. and Adm. News, 2775 (1970).

4. Monitoring

The GEPA statute requires that SEAs provide "proper and efficient administration" of Title I. The GEPA regulations require that SEAs "constantly monitor performance..." of Title I programs. The legislative history emphasizes the importance of monitoring. In 1969, the Senate Labor and Public Welfare Committee explained that

> The Committee wishes to express its deep concern about the necessity for stronger enforcement of Title I requirements by both federal and state agencies in monitoring the legitimate and effective use of Title I funds by local educational agencies. [Emphasis added.] 25 /

In 1974, the House Education and Labor Committee, explained that

> The heart of the program is that [LEAs] must assess the special needs of their educationally deprived children and must formulate programs to meet those needs with the Title I assistance. [SEAs] review and approve the application submitted by local school districts and then monitor and evaluate their programs. [Emphasis added.] 26/

It is clear that SEAs must monitor Title I programs. However, neither the GEPA nor the Title I regulations contain minimum standards for SEA monitoring. Wide variations exist in SEA monitoring policies in such areas as the scope of monitoring, the frequency of on-site visits, on-site monitoring procedures, and the interrelationship of monitoring to auditing and enforcement. The monitoring instruments prepared by most SEAs included in our survey were generally insufficient to satisfy the GEPA monitoring provision that program activities meet the basic Title I requirements.

25/ S. Rpt. No. 91-634, U.S. Code Cong., and Adm. News 2776 (1970).

26/ H. Rpt. No. 93-805, U.S. Code Cong., and Adm. News 4094 (1974).

So that SEAs may clearly understand their Title I monitoring responsibilities, we recommend that the Title I statute (or regulations) be amended to include a separate section on monitoring which includes minimum standards for SEA monitoring of Title I programs. We further recommend that such provisions reiterate the basic purpose of monitoring, explaining which activities SEAs must undertake to fulfill the requirement and which activities may be considered optional. SEAs must determine whether LEAs are complying with each major program requirement, that each Title I program is being implemented in accord with the program design set forth in the state approved application and that the overall quality of each Title I program is assessed.

In addition, we recommend that the statute (or regulations) clarify the scope of monitoring, the required frequency of monitoring, acceptable monitoring procedures, and the interrelationship between monitoring and auditing and enforcement.

Furthermore, we recommend that each SEA be required to develop a new OE certified monitoring instrument which must include all program requirements and which must be updated to reflect any changes in the requirements.

5. Auditing

In general, auditing requirements are found in the GEPA statute and regulations rather than Title I. It is clear that the scope of audits must include fiscal and compliance considerations. However, the scope of the compliance aspect of auditing is not clear. The regulations contain inadequate standards about what constitutes the compliance aspect of an audit. For example, does "compliance" mean that an audit must determine whether LEA Title I projects comply with each Title I requirement? Does it mean that an auditor has complete discretion to determine which of the applicable requirements will be reviewed? Does it mean, in a practical sense an auditor should concentrate on the major program requirements imposed on LEAs. If so, which ones?

Auditing policies vary widely from state to state. We found that some SEAs do not appear to audit LEAs themselves; but that state law or policy requires an annual audit of LEAs by an independent CPA or by another state office or official. In general, these annual audits appear to be fiscal audits that do not consider compliance. With two exceptions, SEA policies did not indicate that the findings of these annual audits are reviewed by the SEA.

We also found that two SEAs lack authority under state law to audit LEAs. In one state an elected state auditor conducts such audits and in the other, the state department of finance has authority under state law to conduct such audits.

Three other SEAs had authority to audit LEAs, but state law also required annual LEA audits by independent CPAs. Another SEA had authority to audit LEAs, but had a written policy that required LEAs to provide for an annual audit and submit the report to the SEA for review.

In addition, we found a general lack of Title I audit instructions for non-federal auditors. 27/ Furthermore, the regulations contain no reference to any auditing standards and are silent about providing audit information to parent advisory councils.

In an attempt to reconcile the different state auditing policies, we have recommended that the GEPA or Title I statute (or regulations) be amended to set forth certain conditions under which audits could be conducted by other state offices or officials or by independent CPAs. These conditions are, in summary, that (1) comprehensive program-specific audit instructions be provided to all auditors; (2) such audits meet the scope requirement (fiscal and compliance); (3) the SEA has written policies requiring the findings of such audits to be submitted to and reviewed by the SEA within specified times; and (4) the SEA has certain written audit resolution procedures.

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27 / The HEW Audit Agency has used "draft" audit instructions for federal auditors for several years.

Furthermore, we recommend that the scope of an audit be clarified to provide that the compliance aspect of each Title I audit must, at a minimum, include a review of: (1) school attendance area eligibility and targeting; (2) eligibility and targeting of children; and (3) supplemental use of Title I funds and the prohibition concerning the use of Title I for general aid. We concluded that an audit of these areas was necessary because they concern the fundamental purposes of Title I. We have recommended that the HEW Audit Agency, with assistance from OE, develop, publish, and disseminate comprehensive Title I audit instructions that can be used by non-federal auditors.

In addition, we recommend that the lack of audit standards in the Title I legal framework be addressed by incorporating by reference the GAO audit standards issued under the signature of the Comptroller General, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Recommendations have also been made about the distribution of Title I sections of audit reports to the public and to parent advisory councils.

6. Complaint Resolution

The Title I regulations in effect during the state interviews addressed complaint resolution in two ways. First, in the context of a reporting requirement, SEAs were required to submit complaint resolution reports and were responsible "in the first instance" for complaint resolution. Second, in the context of what a SEA was required to determine upon review of a LEA application, LEAs were required to develop "adequate procedures to insure prompt response to complaints. and suggestions from parents and parent councils." The Title I regulations did not clarify the relationship between SEA and LEA complaint resolution responsibilities.

The new Title I regulations deleted the express requirement for LEA complaint procedures; established certain minimum standards for SEA complaint resolution procedures; imposed more detailed complaint resolution reporting requirements on SEAs; and, in general, appear to have shifted the focus of complaint resolution to the SEA.

We have concluded that the new regulations do not establish a system of complaint resolution procedures best suited to the needs of Title I. They appear to have the affect of making it less likely that complaints can be resolved where they will probably arise: at the local level. Furthermore, other than casting OE in the passive role of receiving complaint resolution reports from SEAs, they are silent about OE's ultimate responsibility to resolve Title I complaints that cannot be resolved satisfactorily at the LEA or the SEA level.

We recommend that the Title I regulations be amended to impose specific complaint resolution responsibilities on each level of the Title I administrative structure, i.e., LEAs, SEAs, and OE.

LEA Complaint Resolution

We recommend that the Title I statute be amended to require LEAs to develop written procedures for resolving complaints by parent advisory councils, parents, teachers, organizations, or other concerned persons alleging violations of Title I or GEPA. Such written procedures shall contain, at a minimum:

(a) the identification by name, title, address, and telephone number of the local official(s) responsible for investigating and resolving complaints;

(b) specific time limits for investigation and resolution of complaints, not to exceed 30 days;

(c) an opportunity for the complainant and/or the complainant's representative to present evidence (including an opportunity to question parties involved) to the LEA;

(d) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

(e) a requirement that the complainant, the complainant's representative, the district and appropriate school advisory council(s) be notified in writing by the LEA within ten days of the resolution of the complaint; the reasons for the decision shall be in writing;

(f) the right to appeal the final resolution of the LEA to the SEA within thirty days of receipt of the written LEA decision;

(g) the dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school advisory councils.

(h) a statement that exhaustion of the LEA complaint procedure is not a prerequisite to filing a complaint with the SEA or OE.

SEA Complaint Resolution

We recommend that the Title I statute be amended to require the SEA to develop written procedures for (1) reviewing appeals from the final complaint resolution decision of a LEA and (2) if necessary, conducting an independent on-site investigation of the complaint alleging violations of Title I or GEPA. Such written procedures shall contain, at a minimum:

(a) the identification by name, title, address and telephone number of the SEA official(s) responsible for reviewing appeals from the final complaint resolution decision of a LEA and for conducting, if necessary, an independent investigation of the complaint;

(b) specific time limits for completing the review and, if necessary, the independent on-site investigation, not normally to exceed 60 days;

(c) an opportunity for the complainant and/or the complainant's representative and the LEA to present evidence (including the opportunity to question parties involved) to the SEA;

(d) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

(e) a requirement that the complainant, the complainant's representative, the LEA, the district and appropriate school advisory council(s) be notified in writing by the SEA within ten days of the resolution of the appeal; the reasons for the decision shall be in writing;

(f) the right to appeal the final resolution of the SEA or OE within thirty days of receipt of the written SEA decision; and

(g) dissemination, free of charge, of information concerning these procedures to interested parties, including all district and school advisory councils.

(h) a statement that exhaustion of the SEA complaint procedure is not a prerequisite to filing a complaint with the OE.

OE Complaint Resolution

We recommend that the Title I statute be amended to require the Commissioner to develop written procedures for (1) reviewing appeals from the final complaint resolution decision of a SEA (2) receiving complaints directly and (3), if necessary, conducting an independent on-site investigation of a complaint alleging violations of Title I or GEPA. Such written procedures shall contain, at a minimum:

(a) the identification by name, title, address and telephone number of the OE official(s) responsible for reviewing appeals from the final complaint resolution decision of a SEA and for OE conducting, if necessary, an independent investigation of the complaint;

(b) specific time limits for completing the review and, if necessary, the independent OE investigation, not normally to exceed 60 days;

(c) an opportunity for the complainant, the complainant's representative, the LEA, and the SEA to present evidence to OE;

(d) a provision for keeping all correspondence or other written communications concerning the complaint in a central file, accessible to all parties;

(e) a requirement that the complainant, the complainant's representative, the LEA, the SEA, and the district and appropriate school advisory council(s) be notified in writing by OE within ten days of the resolution of the appeal and the right to appeal to the Commissioner; the reasons for the decision shall be in writing; and

(f) dissemination of information concerning these procedures.

7. SEA Enforcement

Under the Title I legal framework, the SEA is required to enforce Title I requirements. SEA "enforcement" in its broadest sense means requiring compliance with Title I requirements through activities that could range from private negotiations to formal administrative hearings to the recoupment of misspent funds. If the state fails to perform its enforcement responsibilities in a manner that conforms to the requirements of Title I, then it may be acting contrary to law and may also be permitting LEAs to do the same. The consequences of failing to enforce may include costly audit exceptions; requests that illegal expenditures be repaid; adverse rulings by the Title I Audit Hearing Board; withholding of funds; or even litigation aimed at insuring lawful compliance with Title I requirements.

First, we have concluded that the federal legal framework for SEA enforcement is not organized to facilitate SEA enforcement, i.e., enforcement related provisions are scattered throughout the statutes and regulations and there is no separate and distinct section labeled "SEA enforcement". In addition, the nature and extent of SEA enforcement authority and available sanctions are not set forth clearly in the federal legal framework.

In general, the state legal frameworks for SEA enforcement reflect these problems found in the federal legal framework. SEA uncertainty about the nature and scope of SEA enforcement authority has generally produced widely varying SEA enforcement policies.

Second, with respect to audit resolution procedures, we have concluded that most SEAs do not appear to have written procedures describing a "systematic method to assure timely and appropriate resolution of audit findings and recommendations." 28/ We also found that the federal legal framework fails to provide any guidance or standards for such a "systematic method."

Third, with respect to SEA recoupment of misspent funds, we have concluded that it is rarely done. We also found that the GEPA regulations do not incorporate an HEW interpretation that the SEA recoup state and local funds in an amount equal to that misexpended rather than permit the state to reduce the district's entitlement for the next year. To allow an LEA to accept less than a full entitlement would place the liability for the misexpenditures on the intended beneficiaries of Title I rather than on the entire school district.

Fourth, with respect to SEA authority for withholding or suspending funding to enforce Title I requirements, we found that with the exception of an express provision found in the comparability regulations, the federal legal framework does not directly and expressly authorize SEAs to withhold or suspend funds to enforce Title I requirements. However, we also found that a reasonable basis exists in the GEPA statute for concluding that SEAs have implied authority to withhold or suspend Title I funds for enforcement purposes. The review of SEA written materials and interviews with SEA Title I officials revealed that a wide variety of SEA policies exist with respect to SEA withholding and suspension.

First, we recommend that the Title I statute (or regulations) be amended to provide a separate section for SEA enforcement.

Second, we recommend that the Title I or GEPA statute (or regulations) be amended to require minimum standards for audit resolution procedures.

Third, we recommend that the GEPA statute be amended to clarify SEA authority to recoup misspent funds by explaining that once the state finally determines that the LEA has misspent Title I funds the LEA must repay the state in the amount of the misexpenditure. The SEA may not accept repayment by reducing the LEA's entitlement for the upcoming year.

28/ 45 C.F.R. §100b.301(i)(1976).

Fourth, we recommend that the Title I statute (or regulations) be amended to make express what is implicit in the GEPA statute, i.e., authority for SEAs to withhold or suspend funds for substantial non-compliance with any Title I requirement. We have also recommended that SEAs be required to develop and disseminate procedures governing withholding and suspension of funding. We have concluded that the express authority is necessary because of the ambiguous nature of the implied authority for SEA withholding and suspension and because of widely varying SEA interpretations of this implied authority.

Appendix A

LEA Program Requirements Analyzed by the Project

a. Access to Information--Requirements intended to ensure that parents, the general public, the SEA and the Commissioner have access to relevant information concerning, among other things, project design, grant approval, and compliance with Title I.

b. Comparability--Requirements intended to ensure that before the addition of Title I funds to the target population, the services provided to the target population are approximately equal to the services provided to non-target populations.

c. Concentration--Requirements intended to ensure that Title I funds are provided to the target population in amounts needed to deliver services of sufficient size, scope and quality to give reasonable promise of success.

d. Coordination--Requirements intended to prevent Title I from duplicating benefits provided to the target population by various federal and state agencies and programs.

e. Eligibility--Requirements defining which school districts, schools and students are eligible to receive funds or participate in Title I programs. Eligibility criteria are of three types: those defining which school districts may receive assistance under Title I, (those which have maintained their fiscal effort) those defining the general characteristics of funded schools (those areas having high concentrations of children from low-income families) and those clarifying the class of potential recipients (children who are educationally deprived). Eligibility criteria are distinct from targeting standards since the latter determine which subset of eligible areas and recipients will in fact be served.

f. General Aid Prohibitions--Requirements intended to ensure that Title I funds are used as categorical aid to meet the needs of educationally deprived children, and not used for the general needs of the schools or the student body at large.

g. Information Dissemination--Requirements intended to ensure that results of educational research and reports on model programs are disseminated to teachers and administrators working on Title I programs.

h. Needs Assessment--Requirements for empirical inquiry into educational deprivation and the incidence, severity, contributing factors, and relative priority of educationally deprived children's special educational needs.

i. Ordinarily Provided- --Requirements intended to ensure that Title I funds will not be used to provide services in Title I project areas which are ordinarily provided with state and local funds to children in non-project area schools. (Now replaced by the "equitably provided" requirement.). ___/

j. Parental Involvement--Requirements which prescribe the nature and extent of parental involvement in the development and operation of Title I programs.

k. Program Design--Requirements for establishing the objectives and subobjectives of the Title I program and determining the activities and services which are necessary, sufficient, and best able to accomplish those ends.

l. Program Evaluation--Requirements which provide that the effectiveness of the Title I program be assessed and analyzed and the results be used by the LEA in the design of future Title I programs.

m. Recordkeeping and Reporting--Requirements pertaining to the maintenance of adequate records and the documentation and timely submission of documents on Title I programs including Title I applications and fiscal, evaluation, and comparability reports.

n. Supplanting--Requirements intended to ensure that (a) school attendance areas and children participating in Title I programs are not penalized in the provision of state and local funds because they are receiving special assistance under Title I; (b) Title I funds are used only to pay for the excess costs of programs; and (c) Title I funds are not used to replace state and local funds that would be provided but for the existence of Title I.

o. Targeting--Requirements which set forth criteria for selecting, from the list of eligible schools and children, those areas and children that will actually receive benefits under Title I.

___/ The equitably provided requirement is intented to ensure that services paid for with state and local funds are equitably provided without regard to the existence of Title I funds.

A DESCRIPTION AND ANALYSIS OF THE RELATIONSHIP BETWEEN TITLE I, ESEA AND SELECTED STATE COMPENSATORY EDUCATION PROGRAMS

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CHAPTER 8

THE TITLE I SUPPLANTING AND EQUITABLY PROVIDED PROVISIONS AND STATE COMPENSATORY EDUCATION PROGRAMS

I. Introduction.................................. 214

II. Overview of the Federal Legal Framework.......... 218

  A. Introduction.............................. 218

  B. Supplement, Not Supplant Provisions.......... 218

  C. The Equitably Provided Provision............. 227

    1. The Objective Criteria Requirement........ 232
    2. The Proportional Distribution Requirement.......................... 235
    3. Summary of the Objective Criteria and Proprotionality Requirements............ 236

III. Acceptable and Unacceptable Methods For Funding Compensatory Education Programs From Federal and State Programs.......................... 236

  A. Introduction.............................. 236

  B. A State Program Which Targets Schools According To the Degree of Educational Deprivation Rather Than Economic Criteria...................... 238

    1. Introduction and Basic Assumptions........ 238
    2. Acceptable Fund Distribution Scheme--LEA No. 1.............................. 240
    3. Unacceptable Fund Distribution Scheme--LEA No. 2.............................. 242
    4. Conclusions.............................. 243

  C. An SCE Program Restricting the Total Number of Project Participants-LEA No. 3............... 246

  D. An SCE Program Which Includes A Single Concentration Requirement Applicable to Title I As Well as the SCE Program-LEAs No. 4, 5 and 6.............. 249

    1. Introduction and Basic Assumptions........ 249
    2. Acceptable Fund Distribution Plans........ 250

a. Separate Funding in Title I Areas of Title I and SCE programs--LEA No. 4 250
b. Joint Funding of a Compensatory Education Program in Title I Areas using Title I and SCE funds--LEA No. 5 251
c. Conclusions and Recommendations 252

3. Unacceptable Fund Distribution Plans 256

a. Combining SCE and Title I Funds in a Way That Ignores the Proportional Distribution Requirement--LEA LEA No. 6 256

E. LEA No. 7: An LEA Expending Substantial Sums for Compensatory Education 259

F. State Compensatory Education Funds Provided Only In Title I Schools 272

G. State Provisions Requiring SCE Funds To Supplement And Not Supplant Federal Funds 273

CHAPTER 8

THE TITLE I SUPPLANTING AND EQUITABLY PROVIDED PROVISIONS AND STATE COMPENSATORY EDUCATION PROGRAMS

I. Introduction

Title I funds must "supplement" and "in no case... supplant...funds from non-federal sources." 101/ Furthermore, services purchased with state and local funds must be "equitably provided to all children...without regard to the availability of Title I funds." 102/

The Title I legal framework prescribes which children will receive the additional resources provided by Title I: educationally deprived children residing in areas having high concentrations of children from low-income families. In other words, only certain children (educationally deprived children) residing in certain areas (areas having high concentrations of children from low-income families) are eligible for Title I assistance. The basis for this focus is explained in the Congressional Declaration of Policy in the Title I statute:

101/ Section 141(a)(3)(B) of the Title I statute (20 U.S.C. 241e(a)(3)(B)).

102/ Section 116a.22(b)(10), 41 FR 42919 (September 28, 1976).

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children. 103/

The basic purpose of the supplement, not supplant, and equitably provided provisions is to ensure that Title I funds are used to "expand and improve" existing programs so that they can serve the "special" unmet educational needs of educationally deprived children residing in areas having high concentrations of children from low-income families.

The supplement, not supplant and equitably provided requirements prohibit LEA discrimination against schools and children in the allocation of state and local funds, including SCE funds, 104/ where the discrimination is attributable to the fact that those schools and children receive special assistance under Title I. Under the supplement, not supplant provisions, educationally deprived children residing in low-income areas

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103/ Section 101 of Title I (20 U.S.C. 241a).

104/ As explained in Part I, we use the abbreviation SCE to refer to either state or local compensatory education programs. Similarly, references to "state" programs in this chapter should be interpreted as referring to local programs as well.

must receive as much state and local funding as they would have received if Title I were not in existence. Similarly, the regulation specifying that SCE funds must be equitably provided to children eligible for Title I funds is an affirmative statement requiring that SCE services be fairly distributed according to objective criteria which do not consider the availability of Title I funds.

In other words, under Title I, states and LEAs must use an objective method for distributing SCE funds which does not penalize educationally deprived children residing in low-income areas. Once the LEA chooses a particular method, it must distribute SCE funds in accordance with that method. While the supplement, not supplant and equitably provided provisions generally prohibit LEAs from taking into consideration the existence of Title I, this does not mean that SCE and Title I programs must serve the same educationally deprived children. Under an objective method for distributing SCE funds to educationally deprived children, a state or LEA can serve children that Title I does not or cannot serve, so long as the method of distribution is not merely a subterfuge for serving only children who reside in affluent areas which are ineligible for Title I programs.

This chapter explains the statutory and regulatory provisions establishing these principles, as well as OE's interpretation of these principles set forth in correspondence with SEAs. To illustrate the application of the principles to specific SCE programs, we have included a number of examples.

In general, we found that the present requirements pertaining to supplement, not supplant and equitably required are sound. However, as revealed in the examples in this chapter, a few problems exist which should be corrected through statutory changes. Most of these problems are technical. Only one is substantive: when SCE programs reach some very high levels of funding, there may be a disincentive for LEAs and states to expand further their SCE programs. Although the current Title I legal framework offers an incentive for LEAs to implement and expand SCE programs, this incentive disappears at high SCE expenditure levels as a result of the operation of the equitably provided clause. To counteract this disincentive, we recommend a statutory exemption from the "equitably provided" requirement in certain circumstances.

II. Overview of the Federal Legal Framework

A. Introduction

This section of the paper describes (a) the relevant sections of the Title I statute and regulations pertaining to the supplement, not supplant and equitably provided provisions and (b) OE's interpretations of these provisions contained in correspondence with SEAs.

B. Supplement, Not Supplant Provisions[105]

The basic purpose of the "supplement, not supplant"[106] provisions of the Title I statute is to ensure that Title I funds are used to provide and pay only for supplementary programs designed to meet the "special" educational needs of educationally deprived children residing in low-income areas. These provisions prohibit LEAs from discriminating against children participating in Title I programs in the provision of state and local funds because such children are receiving federal assistance.

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[105] For an in-depth analysis, see the Legal Standards Project's paper cited supra., n. 11 at Chapter 9.

[106] The "supplement, not supplant" provision was added to the Title I statute in 1970, even though the basic structure of Title I has always required that Title I funds must supplement and never supplant state and local funds. The Senate Committee Report No. 91-634 accompanying the amendments adding the supplanting provision explained, "under present law there is no specific prohibition against supplanting state and local funds with federal funds even though supplanting would be inconsistent with the theory of Title I. Title I funds are intended to be supplementary to the education program generally offered by the States and local educational agencies." 1970 U.S. Code Cong. and Adm. News 2781.

The existence of Title I funds may not be taken into consideration when the school district distributes regular and compensatory education funds from state and local services to educationally deprived children. When state and local funds are distributed, educationally deprived children residing in low-income areas may not be "penalized."

The supplement, not supplant regulations require that the use of Title I funds not result in a decrease in the level of state and local funds that "would be made available" to educationally deprived children but for the existence of Title I funds.

The supplement, not supplant requirement set forth in the Title I statute (Section 141(a)(3)(B)) provides:

> Federal funds made available under this Title will be so used (i) as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this Title, and (ii) in no case as to supplant such funds from non-Federal sources.

Section 116.40 of the regulations provides: [107]

> (a) General. (1) Each application by an applicant agency for a grant under Title I shall contain an assurance that the use of the grant funds will not result in a decrease in the use (for educationally deprived children) of State or local funds which, in the absence of funds under Title I, would be made available for the education of such children, and that such children will not otherwise be penalized in the application of State and local funds because of such a use of funds under Title I.

---

[107] 41 FR 42906 (September 28, 1976). These new regulations are virtually identical to those in effect at the time of our interviews in the ten states (45 C.F.R. §116.17(h)(1975)).

> (2) No project under Title I shall be approved unless Federal funds made available for that project (i) will be used to supplement and to the extent practical, increase the level of State and local funds that would, in the absence of such Federal funds, be made available for the education of pupils participating in that project; (ii) will not be used to supplant State and local funds available for the education of such pupils;
>
> (b) Services which applicant is required to provide. Title I funds shall not be used to provide services which the applicant agency is required to provide by State law or pursuant to a formal determination under Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972 (Pub. L. 92-318), or section 504 of the Vocational Rehabilitation Act of 1973, as amended, or pursuant to a final order of a court. [Emphasis added.]

The language of the statute and section 116.40(a)(1) differ in one respect: the statute refers to "pupils participating in programs and projects assisted under this title" while the regulation refers to "educationally deprived children".[108]

In correspondence with SEAs, the Office of Education has clarified that the frame of reference for considering the application of the supplement, not supplant provision to SCE programs is educationally deprived children, taken as a whole, who reside in low-income areas (i.e., all children eligible for Title I programs). This frame of reference has been required to avoid over-rigidity in the interaction of SCE and Title I programs and other consequences that would be contrary to the intent of Congress to encourage the expansion of SCE programs.[109]

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[108] (The second paragraph of this section quotes the language of the statute.)

If Title I were fully funded, virtually all educationally deprived children in low-income areas would be Title I participants. However, because Title I is not fully funded, it can, in fact, provide programs of the sufficient size, scope and quality only to a portion of the total number of eligible children.

Congress, in recent amendments to Title I, intended to encourage states and LEAs to develop and expand SCE programs for educationally deprived children--including those in low-income areas who, while eligible for Title I, are not now served. If the frame of reference for considering supplanting issues were solely children who presently participate in Title I programs, it could be considered a violation of the supplanting provision to use SCE funds primarily to serve children eligible for Title I who receive no Title I services because Title I is not fully funded--this is so because such children are prevented from "participating" in Title I programs by insufficient federal funds. The Office of Education's interpretation which uses all children eligible for Title I services as the frame of reference for supplanting, carries out the intent of Congress by allowing SCE funds to be flexibly used in conjunction with Title I to expand the services provided to educationally deprived children in low-income areas who Title I can not now serve.

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[109] Agencies are authorized to promulgate regulations which vary from a literal reading of the terms of the statute where: (a) the Congressional intent is clear; (b) the agency's interpretation is consistent with the "spirit", "purpose", and "underlying policy" of the statute; and (c) the agency's interpretation avoids unreasonable results. See Train v. Colorado Public Interest Research Group, 426 U.S. 1 (1976), Philbrook v. Glodgett, 421 U.S. 707 (1975), Morton v. Ruiz, 415 U.S. 122 (   ) (dictum), Perry v. Commerce Loan Company, 384 U.S. 934 (1966), and U.S. v. American Trucking Association, 310 U.S. 534 (1940).

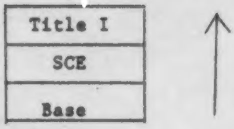
It is likely that Congress did not consider the consequences for the distribution of SCE funds of focusing solely on Title I participants for considering supplanting issues when Title I is not fully funded and many eligible children are prevented from participating in Title I. These consequences are that (a) SCE funds, which could have been used to provide compensatory education programs to children eligible for, but not served by, Title I must be used for children who already receive Title I services, and (b) flexibility in coordinating the use of SCE and Title I funds, thereby enabling the LEA to serve all Title I eligible children, is substantially inhibited.

In sum, Congress, in statutory amendments to Title I pertaining to SCE programs, intended to encourage states and LEAs to serve additional educationally deprived children with SCE programs. Using actual participants in Title I programs, rather than those children eligible to participate, as the reference for supplanting issues would have the opposite effect. To avoid the consequences described above, resulting from the underfunding of Title I, the Office of Education in regulations, and interpretations given to SEAs has consistently used all educationally deprived children in low-income areas (the children that would participate in Title I programs if Title I were fully funded) as the frame of reference for considering issues pertaining to the supplement, not supplant requirement. This interpretation, in our opinion, carries out the intent of Congress under circumstances where Title I is not fully funded. It ensures that children eligible for Title I, taken as a whole, are not discriminated against in the provision of SCE programs and creates needed flexibility in coordinating SCE and Title I programs for educationally deprived children residing in low-income areas.

The general principles of OE's interpretation of the supplement, not supplant requirement are outlined in the paragraphs below. Later in this chapter we illustrate, with examples, the application of these principles to specific factual situations and a statutory amendment which will put to rest questions concerning the legal basis for OE's interpretations.

The standards and operative definitions as interpreted by OE establish general principles for LEAs to apply in distributing state and local funds, including SCE funds. First, base state and local allocation must be distributed without considering which schools receive Title I funds. Then, SCE funds are distributed according to state regulation policies established by the LEA without considering the existence or distribution of Title I funds. Finally, Title I funds are distributed by the LEA according to the federal regulations. This three-step distribution process is frequently called "layering."

The following illustration shows this process graphically:



The general principle that SCE funds must be distributed without regard to the existence of Title I is subject to an important qualification: the existence of Title I funds can be taken into account in the allocation of SCE funds so long as educationally deprived children in poor areas, receive, in the aggregate, the same amount of SCE funds as they would have received if Title I were not in existence. In other words, so long as children eligible to receive assistance under Title I, taken as a whole, are not penalized in the provision of SCE funds, the supplement, not supplant requirement has been fulfilled.[110/] This qualification to the general principle that SCE funds must be distributed without regard to the existence of Title I is contained in regulations and correspondence with SEAs. As is discussed in detail later in the chapter, the qualification adds great flexibility to the administration of SCE and Title I programs.

[110/] Another requirement, that SCE funds be distributed according to objective standards, must be referred to to determine the level of SCE funds that "would have been provided," but for the existence of Title I.

C. The Equitably Provided Provision[111]

Services provided with state and local funds must be "equitably provided to all children...without regard to the availability of Title I funds." This is referred to as the "equitably provided requirement," which appears in the revised regulations. Specifically, the revised regulations state that the SEA may not approve a Title I application unless it has determined that

> services are equitably provided to all children with state and local funds without regard to the availability of Title I funds in the applicant's schools for the educationally deprived children.[112]

This provision implements the statutory requirements that Title I funds be used to meet the special educational needs of educationally deprived children and that Title I funds are supplemental by requiring that educationally deprived children in low-income areas receive an equitable share of services provided with state and local funds.

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[111] For an in-depth analysis of this provision, see the paper cited supra, n. 11 at Chapter 11.

[112] §116a.22(b)(10), 41 FR 42919 (September 28, 1976).

The preamble to the revised regulations explains that the "equitably provided" clause replaces, in part, the "ordinarily provided clause[113] and applies directly to SCE programs:

> Comment. Several comments expressed concern about, or requested clarification of the term "ordinarily provided" as it was used in subparagraph (a)(2), particularly as it applies to State and locally funded compensatory programs.
> Response. The clause containing this term was deleted. Since other provisions of the regulations clearly indicate that services generally provided for all children are not to be paid for from Title I funds there is no need for this clause. A similar provision has been inserted in §116a.22(b)(10), and modified to address the issues of the use of Title I funds by local educational agencies when State and local funds are being used for purposes that are similar

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[113] The "ordinarily provided" requirement stated: "No project under Title I of the Act will be deemed to have been designed to meet the special educational needs of educationally deprived children unless the federal funds made available for that project (3) will not be used to provide instructional or auxiliary services in project area schools that are ordinarily provided with state and local funds to children in non-project area schools." 45 C.F.R. §116.17(h)(3)(1974).

to those of Title I. 114/

Letters written by OE in the last few years indicate that the equitably provided standard was applied by OE even prior to the issuance of the revised regulations. These letters further clarify the development and meaning of this standard. In a letter to one state, OE used the concept of equitably provided to explain that Title I areas may not be subject to discrimination in the distribution of SCE funds.

> If ...a local educational agency using State funds were to provide specific compensatory education services exclusively for children in areas not designated for projects, that agency would be violating the provisions of Section 141(a)(3)(B) of Title I and the regulation in 45 C.F.R. §116.17(h) prohibiting the supplanting of State and local funds. ...
>
> The local educational agency would not be complying with the foregoing if it attempted to provide compensatory education services in the Title I areas with Title I funds and to provide similar services in the non-Title I areas with State or local funds. Any State compensatory education program, therefore, should be established so as to make it available on an equitable basis to Title I and non-Title I areas. [Emphasis added.]

More recently, OE stated this policy with greater refinement:

114/ 41 FR 42896 (September 28, 1976). The preamble repeats this point at 42903:

> As indicated in the comments on §116.40, the provision concerning services 'ordinarily provided' with state and local funds is now found in §116a.22 (b)(10), and has been modified to address the use of Title I funds when state and local funds provide services that are similar to those provided under Title I.

> First of all, the local educational agency for the newly organized school district should determine how and to what degree various educational services should be provided in the schools of the district. Any such service which cannot be provided for all children must, however, be equitably distributed in Title I and and non-Title I areas before the local educational agency may consider replicating that service with Title I funds (if it meets Title I criteria) or supplementing that service with Title I funded services. *The distribution of such a service to children in Title I and non-Title I areas must be in proportion to the number of children in those areas who qualify for that service according to objective criteria*.
>
> Under the foregoing conditions the local educational agency *could use Title I funds to provide similar services in Title I areas that cannot be reached by the State and locally funded program or to supplement such programs in ways that meet Title I criteria.* In the event that more State-local funds become available for such service the principle of *proportionality* in the distributions of such services among children in Title I and non-Title I areas would have to be maintained.
>
> As you may know, the House Report on the Education Amendments of 1974 indicated a desire on the part of Congress to encourage the use of State and local funds for compensatory education programs. The Office of Education also wishes to encourage the use of State and local funds for this purpose but with the understanding that children in need of such services in Title I areas must have an equal opportunity to receive such services with equally needy children in non-Title I areas. A disproportionate distribution in non-Title I areas of State and locally funded compensatory education programs would preclude the use of Title I funds for similar programs. [Emphasis added.] 115/

115/ Under the revised regulations, equitable provision

In sum, these letters explain that the distribution of SCE services must be *in proportion* to the number of educationally deprived children residing in Title I and non-Title I school attendance areas[116] who qualify for the services according to *objective criteria*, e.g. all children below the 25th percentile in reading.

The sections which follow discuss in greater detail the two components of the equitably provided provision--

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(footnote continued from previous page)

of SCE services to Title I areas is a requirement LEAs must meet in order to be eligible *at all* for Title I funds. The original "ordinarily provided" clause was a restriction on how Title I funds could be spent, rather than a threshold eligibility requirement. This is reflected in the last sentence of the quoted letter, which was written prior to the promulgation of the revised regulations.

[116] The letters do not, however, expressly clarify whether the phrases "Title I areas" and "children in Title I areas" mean *eligible* areas and children or areas and children *actually receiving* Title I funds. Nonetheless, OE has consistently interpreted the equitable provision concept as applying to eligible areas and children, taken as a whole.

the objective criteria requirement and the proportional distribution requirement.

1. The Objective Criteria Requirement

The objective criteria requirement ensures that SCE funds will be distributed without discrimination against Title I project areas or children participating in Title I programs. The requirement guards against two types of discrimination.

First, the objective criteria requirement operates to prevent either conscious or unconscious penalization of Title I project areas or program participants. It accomplishes this by disallowing subjective methods for determining which areas and which children may receive the benefits of SCE programs. For example, if SCE legislation specified that "any educationally disadvantaged child in the district may participate in the SCE program at the discretion of the LEA," it would be impossible to determine whether areas or children will be chosen to participate in a SCE program "without regard to the existence of Title I." If the subjective recommendations of LEA staff members were deciding factors in which children will participate in an SCE program, such decisions could, consciously or unconsciously, be based on which children do not receive assistance under Title I. The effect of such subjective criteria would be to penalize children participating in

Title I programs in the provision of SCE funds simply because of the existence of Title I funds.

Secondly, the objective criteria requirement ensures that the distribution system will not penalize children eligible for Title I by requiring that the SCE standard be non-discriminatory on its face.[117] For example, the following standard would not satisfy the "objective criteria" requirement: "SCE funds must be distributed to educationally deprived children performing below the 25th percentile residing in non-Title I areas."

Although the standard is clear and is not "subjective," i.e., "Quartile I children residing in non-Title I areas,' it discriminates, on its face, against Quartile I children residing in Title I project areas.

It would be appropriate for an LEA to distribute SCE funds according to the number of children performing at or below the 25th percentile. Similarly, it would be appropriate if the standard were "below the 50th percentile." Both standards are objective criteria of educational need.[118]

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[117] This interpretation of the objective criteria requirement flows directly from the supplement, not supplant provision which prohibits discrimination against Title I children in the allocation of services provided with state and local funds, and from the "equitably provided" regulation.

[118] The objective criterion must be to the need, or degree of need, for the service to be equitably provided. The need for SCE services determines the proportional distribution of SCE funds in Title I and non-Title I areas (the

In sum, the objective criteria requirement ensures that educationally deprived children residing in low-income areas are not penalized or prejudiced in the provision of SCE funds because of arbitrary decisions made by LEA staff or because of the existence of an arbitrary standard.

(footnote continued from previous page)

"proportional distribution" requirement is discussed in the next section of the text).

The objective criterion must not finesse the proportional distribution requirement by itself incorporating a pre-determined criterion of ultimate distribution which bears little or no relation to the needs of the children to be served. For example, the objective criterion, "one special reading teacher per school," would--in all but the rarest circumstances, involving sheer coincidence--be unacceptable. The schools might be of different size and might have different numbers of children needing the services of a special reading teacher; the children in different schools might need such services, moreover, to different degrees. Under such circumstances, use of the criterion, "one special reading teacher per school" would not be equitable because it attempts to avoid the proportional distribution requirement by building in a distribution requirement of its own, one that is likely to be irrelevant to the different degrees of need for the service in different schools. Of course, if, through sheer coincidence, the criterion "one special reading teacher per school" were to actually reflect the distribution of the need for special reading teacher services, then it would be an acceptable ultimate criterion of distribution. Its acceptability in this regard, however, presupposes equality of need from school to school under an objective standard of need. Thus, the analysis comes full circle; an objective standard of need first must be established before the validity of any ultimate criterion of distribution can be determined.

In sum, the objective standard employed to meet the objective criteria requirement must be a standard reflecting need for the service to be provided. It must not be a standard which makes presuppositions that do not, in fact, reflect reality.

Objective, non-discriminatory distribution criteria for SCE funds are essential. We recommend that LEAs be required in their Title I applications to set forth in detail the objective criteria used to distribute SCE funds.

2. The Proportional Distribution Requirement

In many cases SCE funds will not be sufficient to provide services to all children eligible under the objective criteria selected. In this situation, where some but not all potential beneficiaries will receive services, SCE funds must be proportionally distributed.119/

For example, assume that (a) an SCE program incorporates the objective criterion that SCE funds will be distributed in equal amounts per eligible child to meet the needs of educationally deprived children in grades K-6 performing below the 25th percentile; (b) 80 percent of the children performing below the 25th percentile reside in Title I eligible areas; (c) the SCE program is underfunded so that

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(footnote continued from previous page)

This analysis of the objective criteria requirement, it should be noted, applies only to funds not governed by the Title I comparability requirement i.e., SCE funds which an LEA seeks to have excluded from comparability. The Title I comparability requirement employs a standard which reflects the distribution of more than one service. In a given school, underfunding of one service can be counterbalanced by greater funding of another, with the result being full satisfaction of the comparability requirement. The equitably provided requirement was not intended to change this result for services and funds governed by the comparability requirement.

[119] Allocation of more than a proportionate share of Title I eligible areas is acceptable. See infra, at p. 272.

not all those eligible under the objective criterion can be served; and (d) the State does not require LEAs to distribute limited SCE funds to schools in rank order, according to the incidence of educational deprivation.[120]

Because 80 percent of the eligible children reside in Title I eligible areas, the LEA, under the proportionality requirement must distribute, at a minimum, 80 percent of its SCE appropriations in Title I eligible areas. The distribution within Title I areas must be made without discriminating against children who would have received assistance under the SCE program but for the existence of Title I.

3. Summary of the Objective Criteria and Proportionality Requirements

If these principles are followed, Title I schools which do not receive assistance under the SCE programs may use Title I funds to provide the same type and level of services provided with SCE funds. Furthermore, Title I funds may be used in schools receiving both Title I and SCE funds to provide the same type and level of services provided with SCE funds in non-Title I areas.

III. Acceptable and Unacceptable Methods For Funding Compensatory Education Programs From Federal and State Programs

A. Introduction

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[120] The significance of this factor is discussed *infra* at p. 243.

As explained supra, the primary purpose of the supplement, not supplant and equitably provided requirements in regard to SCE programs is to ensure that the basic focus of Title I, i.e., meeting the special educational needs of educationally deprived children residing in low-income areas is not distorted by the LEA. An LEA cannot substitute its own policy for the Title I policy focusing on low-income areas.

The supplement, not supplant and equitably provided requirements prevent such a substitution from taking place. However, as the examples that follow illustrate, LEAs and states retain great flexibility to promote their own compensatory education policies with SCE funds. Of course, these Title I requirements do, for example, preclude one possible state policy: use of SCE funds to serve only educationally deprived children in its more affluent attendance areas - a policy which would discriminate against Title I children.

Several alternatives for satisfying the supplement, not supplant and equitably provided provisions are analyzed in the following pages. Approaches which, in our opinion, would not satisfy the current OE requirements are also described. In addition, alternatives which satisfy current OE policy but which may be construed as being inconsistent with one possible reading of the statute and regulations are discussed as well. Following this discussion, we offer recommendations for clarifying and modifying the existing federal legal framework. The proposed changes are less restrictive than the current provisions, but preserve the essentials of the policy prohibiting penalization of Title I eligible areas or children in the distribution of SCE funds.

B. A State Program Which Targets Schools According to the Degree of Educational Deprivation Rather Than Economic Criteria

1. Introduction and Basic Assumptions

Under Title I, LEAs are required to rank schools according to economic criteria. The schools having the highest incidence of poverty must generally receive Title I funds before schools with a lower incidence of poverty receive assistance.

In this example the state has chosen to target school attendance areas according to the objective criterion of educational rather than economic disadvantage for distribution of SCE funds. In other words, under state law or local policy SCE funds must be used in schools having the highest incidence of educational deprivation before lower ranked schools receive assistance. We will see how the supplement, not supplant provision operates in this situation. In the examples below both LEAs No. 1 and No. 2 apply the same educational criterion for distribution of SCE funds. However, LEA No. 2, because it uses Title I funds to replace SCE funds that would have been available to Title I eligible children, has violated the supplement, not supplanting requirement. LEA No. 1 has not.

For purposes of these two examples, make the following assumptions.

(1) The objective criterion governing the distribution of SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate. All other educationally deprived children are ineligible for assistance, i.e., second quartile (Q_2) children in K-6 and Q_1, and Q_2 children in grades 7-12.

(2) Elementary schools are ranked according to the number of children in the first quartile. SCE funds must be distributed to the highest ranked schools before funds may be used in lower ranked schools.

(3) The state legal framework requires LEAs expend a minimum of $300.00 in SCE or Title I on each child in a compensatory education program.

(4) There are 500 Q_1 students in grades K-6 eligible for assistance under the SCE program; in addition, there are 500 Q_2 children in K-6 and 1000 Q_1 and Q_2 children in grades 7-12.

(5) SCE funds in the amount of $75,000 are available to the LEA. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6 in each of the districts described below ($300 x 500 Q_1 students)).

(6) $150,000 are available from Title I (amount appropriated by Congress).

We will now consider the funds distribution plans of LEAs No. 1 and No. 2.

2. Acceptable Fund Distribution Scheme- LEA No. 1

LEA No. 1 has enough money to serve 250 students with SCE funds (75,000 ÷ $300 = 250).

LEA No. 1 has six elementary schools. The ranking of the schools according to the number of educationally deprived children scoring in the first quartile is set forth below. As indicated in parentheses three of the schools are also eligible for assistance under Title I.

	Number of Q_1 Students
School A (Title I eligible)	130
School B (Title I eligible)	120
School C (Title I eligible)	80
School D (Ineligible)	75
School E (Ineligible)	50
School F (Ineligible)	45

In accordance with the school ranking used for distribution of SCE funds, these funds would "run-out" after serving school B. Thus, LEA No. 1 uses SCE funds for Q_1 children in schools A and B[121] and Title I funds are then used to meet the needs of (a) Q_1 children in school C, (b) Q_2 children in elementary schools eligible under Title I for assistance (A, B, and C), or (c) Q_1 and Q_2 children in grades 7-12 residing in eligible areas.

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[121] The circumstances under which an LEA may provide a compensatory education program funded solely from SCE instead of Title I funds at a school which would have received funding under Title I but for the existence of the SCE program are described *infra*, in Chapter 9.

Under the supplement, not supplant restriction Title I funds may not be used to replace (supplant) the level of state and local funds that would have been provided but for the existence of Title I. The level of state and local funds that "would have been provided" in this example is determined by reference to the objective method of fund distribution selected, i.e., for the distribution of SCE funds, schools having the highest incidence of educational deprivation receive assistance before lower ranked schools. In other words, under the supplement, not supplant provision, SCE funds must be distributed in accordance with the objective criterion established by state law or local policy as if Title I funds were not available; then, Title I funds are allocated in accordance with federal rules to meet the needs of educationally deprived children in low-income areas. In LEA No. 1, this means that 100 percent of the SCE funds are used to meet the needs of educationally deprived children in low-income areas (Title I areas) because the money runs out after schools A and B are served and both are Title I schools. If the two highest ranked schools were ineligible for assistance under Title I they would receive 100 percent of the SCE funds pursuant to state law. Title I areas would have received no assistance. In both cases, the LEA would fully comply with Title I.

3. Unacceptable Fund Distribution Scheme-LEA No. 2

Assume that LEA No. 2's ranking of schools by educational deprivation is identical to LEA No. 1's ranking. However, it is the policy of LEA No. 2 that any high ranked school (based on SCE criteria) which is also eligible for assistance under Title I receive funding under Title I instead of under the SCE program. In other words, schools which would otherwide have received assistance under the SCE program but for the existence of Title I are skipped and, instead receive assistance under Title I. LEA No. 2 prefers to use Title I instead of SCE funds in high ranked schools to further its objective of serving all children in the district eligible for the SCE program, i.e., 0_1 children in grades K-6, irrespective of their residency. The LEA's policy is contrary to the objective criterion established by the state for distribution of SCE funds.

Thus, based on the LEA's ranking, School A would have received $39,000 in SCE funds (130 x $300 = $39,000) but for the existence of Title I. However, because school A is eligible for Title I, LEA No. 2 does not distribute any SCE funds to it. Similarly, LEA No. 2 uses $36,000 (120 x $300.00 = $36,000) in Title I funds rather than SCE to meet the needs of Q_1 children in school B, which, but for the existence of Title I, would have received assistance under the SCE program.

LEA No. 2 has supplanted SCE funds with Title I funds. Educationally deprived children in low-income areas have been discriminated against with respect to the distribution of $75,000.00 in SCE funds. But for the existence of Title I, Q_1 children in schools A and B would have received SCE funds under the objective criterion for their distribution, as in the case of LEA No. 1.

A recent decision by a United States District Court, faced with virtually identical facts described in the LEA No. 2 hypothetical, sustained this conclusion.[122/]

4. Conclusions

In sum, where the SCE legal framework requires districts to serve schools in rank order, based on the incidence of educational deprivation (or other objective criterion), it is clear that an LEA may not skip a school eligible for assistance under a SCE program simply because the school is also eligible for assistance under Title I. The effect

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[122/] Alexander v. Califano, No. C-76-1982, (N.D.Cal. May 23, 1977).

of such a policy would be to defeat the objective of Title I, which is to meet the needs of educationally deprived children residing in low-income areas. The objective of Title I is defeated by the discrimination against low-income areas in the distribution of SCE funds. In LEA No. 2 the replacement of SCE funds with Title I funds results in both Title I and SCE funds being used to underwrite a state policy focusing compensatory education funds on educationally deprived children, irrespective of their residency.

It is important to point out that a state is not forbidden from using SCE funds for educationally deprived children residing in areas ineligible for Title I. Indeed, the present supplement, not supplant and equitably provided concepts were developed to encourage states to expand compensatory education opportunities. All they require is that low-income areas not be discriminated against in the distribution of SCE funds.

It is also important to understand that Title I, does not require that LEAs rank schools according to their incidence of educational deprivation. Title I simply requires that an LEA continue the same distribution of SCE funds which it would use if it had no Title I funds to allocate. If, in the absence of Title I funds, the SCE funds must be spent in schools in order of the educational need rank order, the SCE monies must continue to be expended in that same pattern even though some high-ranked schools may also be eligible to receive Title I funds.

Title I does not require that states adopt a ranking system. There are other funding methods which satisfy the supplement, not supplant and equitably provided regulations. For example, instead of requiring that LEAs rank schools according to the incidence of educational deprivation, an SCE program could adopt any of the policies described below. First, the LEA could set an objective cut-off point at, for example, Q_1 and Q_2 and, to the extent there are insufficient SCE funds to meet the needs of all eligible children, provide a proportional share at each school in the district, depending on the number of eligible children in attendance.[123/] Second, Title I funds could be used to meet the needs of children in certain grades, e.g., 7-12, whereas the SCE funds could be used in other grades, e.g., K-6. Under both of these alternatives, the objective criterion must be applied in an identical fashion in Title I as well as non-Title I areas, e.g., SCE funds serve only K-6

[123/] The various options for jointly funding a compensatory education program with Title I and SCE funds are described and analyzed in Chapter 10.

children in both areas. Such SCE fund distribution schemes, which do not require the ranking of schools, are analyzed below.

C. An SCE Program Restricting the Total Number of Project Participants-LEA No. 3

In contrast to the fund distribution scheme described in the previous example, the funding scheme in this hypothetical does not include a school attendance area ranking provision. Thus, assume in the hypothetical below that:

(1) There is no school attendance area ranking requirement.

(2) The objective criterion governing the distribution of SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate (a restriction on the number of project participants).

(3) The state legal framework requires that the total number of children participating in the SCE program not exceed the total allocation divided by $300 (another restriction on the number of project participants).

(4) SCE funds in the amount of $75,000 are available to the LEA. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6).

(5) There are 200 eligible children in each of two Title I schools and 50 eligible students in each of two non-Title I schools (total 500).

(6) $150,000 are available from Title I.

Title I Schools		Non-Title I Schools	
200	200	50	50

The LEA, recognizing that it will not be able to fund services for all eligible students decides to distribute state funds in the following manner:

First, it determines the total number of eligible students who may participate, by dividing $75,000 (amount of SCE available) by $300.00 (see assumption 3 above) = 250 students.

Since only 50 percent of the eligible students may actually receive services under the SCE program, the LEA must decide which children to select. The LEA makes the following calculations:

Eighty percent of the eligible children (400 of the 500) reside in Title I attendance areas; therefore 80 percent of the SCE education funds, $60,000 must be used in these areas ($75,000 x 80 percent = $60,000). The remaining $15,000 may be spent in non-Title I areas.

By dividing the total number of funds available for Title I schools by $300, the LEA determines that it can provide services to 200 children in eligible areas ($60,000 ÷ $300 = 200)[124/] and 50 children in non-Title I areas ($15,000 ÷ $300 = 50).

Applying the above procedure, the LEA provides SCE funded services to half of the eligible children attending Title I schools and half of the eligible children attending non-Title I schools. Title I funds are then used to provide services to three other groups of children -- the remaining 200 Q_1 children in Title I areas, Q_2 elementary school children in Title I areas, and Q_1 and Q_2 children in grades other than K-6.

The LEA's distribution of SCE funds fully complies with the present requirements. State funds are distributed equitably, without penalization of Title I areas or program participants.

[124/] The question remains whether and under what circumstances an LEA must also provide Title I funds to the 200 Q_1 children residing in Title I areas receiving assistance under the SCE program. This issue is analyzed *infra*, in Chapter 9.

D. An SCE Program Which Includes A Single Concentration Requirement Applicable to Title I As Well As The SCE Program-LEAs No. 4, 5 and 6

1. Introduction and Basic Assumptions

The fund distribution scheme developed by the state in this hypothetical also does not include a school attendance area ranking requirement: In this regard it is similar to the previous example. In the previous example of LEA No. 3 we were not concerned with the concentration requirement applicable to Title I funds. In the example below, however, we assume that the same concentration requirement is applicable to both Title I and the SCE program. Thus, in this example make the following assumptions:

(1) There is no school attendance area ranking requirement.

(2) The objective criterion governing the distribution of Title I and SCE funds provides that children in the first quartile (Q_1) in reading achievement in grades K-6 may participate. Educationally deprived children in grades K-6 in the second Quartile (Q_2) and Q_1 and Q_2 children in grades 7-12 are ineligible.

(3) There are 200 Q_1 children in each of two Title I elementary schools and 50 eligible students in each of two non-Title I elementary schools (total 500).

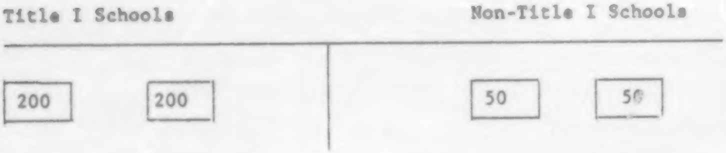
(4) There are 500 additional educationally deprived children in K-6 who are in the second quartile (Q_2) and 500 educationally deprived children in grades 7-12 who are not receiving any assistance under the Title I or SCE program.

(5) The state legal framework requires LEAs to expend a minimum of $300.00 in compensatory education funds on each child in a compensatory education program. Under the state guidelines, either SCE or Title I funds, or both, may be used to meet this $300.00 expenditure per pupil.

(6) SCE funds in the amount of $75,000 are available to the LEA. (It would take $150,000 to provide SCE services to all 500 Q_1 students in grades K-6).

(7) $150,000 are available from Title I (amount appropriated by Congress).

Elementary Schools



We will consider alternative fund distribution plans of three different LEAs.

2. Acceptable Fund Distribution Plans

a. Separate Funding in Title I Areas of Title I and SCE programs--LEA No. 4--LEA No. 4 recognizes that $60,000 of the $75,000 allocation must be expended in Title I schools since 400 of the 500 or 80 percent of the eligible students reside in Title I areas. The LEA satisfies the $300.00 concentration requirement by providing only SCE funds to one Title I eligible school (200 children x $300 = $60,000) and uses only Title I funds in the other Title I school. The remaining $15,000 of SCE funds are used to provide services to the 50 Q_1 in one of the non-Title I schools ($15,000 ÷ $300 = 50). This LEA then uses the remainder of its Title I allocation to (a) provide additional services to the Q_1 children attending the elementary schools, (b) serve Q_2 elementary school children or (c) eligible children attending high schools in Title I areas.

b. Joint Funding of a Compensatory Education Program in Title I areas using Title I and SCE funds--LEA No. 5--LEA No. 5 decides to distribute SCE funds in the following manner. First, like LEA No. 4, it also determines that since 400 of the 500 eligible students reside in Title I areas, 80 percent of the funds ($60,000) will be provided to children in Title I areas. However, recognizing that there are 400 eligible children in the Title I areas, LEA No. 5 distributes $150 ($60,000 ÷ 400) per child from SCE and $150 per child for each child from Title I.[125/] The total for each child is $300. Thus, the concentration requirement has been satisfied. In the non-Title I areas, the LEA satisfies the $300 concentration requirement by serving 50 of the 100 eligible students with the remaining SCE funds. The remainder of the Title I allocation is used in Title I attendance areas to provide additional services to Q_1 elementary school children or to fund services for Q_2 elementary school children and eligible children attending high schools.

125/ Of course, since Title I funds are used for the program, all Title I requirements concerning program design, etc. would have to be met. See chapter 10 on the coordination of Title I and SCE programs.

c. Conclusions and Recommendations--To what extent are the practices of these two LEAs consistent with the supplement, not supplant and equitably provided provisions?

We conclude that the practices pursued by LEA No. 4 and LEA No. 5 are both consistent with the existing regulations and informal legal framework developed by OE and that the OE policy is consistent with the supplement, not supplant provision set forth in the statute. However, because we have also concluded that a court might interpret the statute differently from OE, we recommend that the statute be clarified. These conclusions are explained below.

As explained *supra*, the supplement, not supplant provision set forth in the statute provides that LEAs must supplement, not supplant the level of funds that would, in the absence of Title I, be made available to educationally deprived children residing in low-income areas participating in Title I programs. Similarly, the equitably provided provision requires that SCE services be distributed without regard to the availability of Title I funds.

One interpretation of the underlined phrases in the previous sentences is that under no circumstances may a LEA take into consideration the existence of Title I in distributing SCE funds. The procedure used by LEA No. 4 is clearly consistent with this interpretation since SCE funds are distributed without regard to the availability of Title I. In LEA No. 4 children receive $300.00 in SCE funds regardless of whether they reside in a Title I eligible area or an area ineligible for Title I.

The procedure used by LEA No. 5 is also consistent with the purpose of the federal policy, although the distribution scheme does take into consideration the existence of Title I. As compared to LEA No. 4, educationally deprived children in LEA No. 5 attending one Title I eligible school receive $150 more SCE funds than they would have received in the absence of Title I, and educationally deprived children attending the other Title I eligible school receive $150 less SCE funds. But this is counter-balanced by the first Title I eligible school receiving $150 less in Title I funds and the other Title I eligible school receiving $150 more Title I funds than they would have received if LEA No. 5 had not taken into consideration the existence of Title I funds. The net effect is the same as that in LEA No. 4: Title I eligible schools and children, taken as a whole, are not penalized, though some actual participants in Title I programs receive $150 less SCE funds.

We concluded that LEA No. 5's approach complies with the law because the purpose of the supplement, not supplant and "equitably provided" requirements, which is to prevent educationally deprived children residing in Title I eligible areas from being penalized in the distribution of SCE funds, does not require LEAs to completely ignore Title I funds when they distribute SCE funds so long as penalization does not result. LEA No. 5 has not penalized educationally deprived children residing in Title I areas since

LEA No. 5 could have provided, without objection, the identical supplementary services to Title I children with Title I and SCE funds simply by accounting for them as did LEA No. 4. Consequently, no discrimination against Title I eligible children resulted from the fact that LEA No. 5 took Title I funds into consideration in distributing SCE funds. For good reasons OE has not distinguished between these two situations.

Graphically, the reasonableness of OE's policy is described below. Note that in both LEAs, each child receives $300.00 in compensatory education funds.[126]

Title I Eligible Schools

	LEA No. 4		LEA No. 5		
A	Title I	$300	Title I	$150	= $300
	SCE	0	SCE	$150	
B	Title I	0	Title I	$150	= $300
	SCE	$300	SCE	$150	

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[126] Also note that in LEA No. 5 all schools eligible for Title I are receiving Title I funds and are thus subject to all Title I requirements, including the parent involvement requirement. In contrast, some schools in LEA No. 4 are not receiving any assistance under Title I and therefore are not subject to certain Title I requirements. This issue is developed more fully in Chapter 9.

To protect LEA No. 5 from potential liability stemming from the possibility that a court might interpret the statute and implementing regulations differently than OE, we recommend that the statute be clarified by an amendment which would provide that notwithstanding Section 141(a)(3)(B) of Title I (the supplement, not supplant requirement) an LEA, at its option, may take into consideration the existence of Title I funds in distributing SCE funds, provided that (a) state and local special program funds for educationally deprived children are distributed according to objective criteria, (b) educationally deprived children, taken as a whole, who reside in low-income areas are not penalized in the distribution of such funds and, at a minimum, such funds are equitably provided to such children and (c) educationally deprived children residing in low-income areas who are or would have been considered program participants under Title I, but for the existence of the SCE program, receive the same nature and scope of services under the SCE program as would otherwise have been provided under Title I.[127]

To demonstrate compliance with the statutory provisions proposed above, we recommend each LEA explain in its application how it plans to comply with the supplement not supplant and equitably distributed provisions and include in its Title I application, at a minimum, the following information:

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[127] This issue is more fully developed in Chapter 9.

(1) the objective criteria used as the basis for distribution of funds under SCE programs;

(2) the types of services to be provided with SCE funds;

(3) the total number of students in each school who are eligible under the objective criteria identified in (1);

(4) the total amount of SCE funds distributed to each school;

3. Unacceptable Fund Distribution Plans

a. *Combining SCE and Title I funds in a way that ignores the proportional distribution requirement*--LEA No. 6--The same factual assumptions are made with respect to LEA No. 6 as were made about LEAs 4 and 5 (see *supra*, p. 249). LEA No. 6, desiring to serve all children in the district *eligible for the SCE program*, i.e., Q_1 children in grades K-6 *irrespective of their residency*, employs the following approach. Recognizing that $150,000 are required to provide services to its 500 eligible elementary children, the LEA *combines* the $75,000 in SCE funds with $75,000 of Title I funds to obtain the needed $150,000. The $150,000 are used to provide $300 in services to each child eligible to participate in the compensatory education program. $75,000 in Title I funds and $45,000 in SCE funds are used to serve the 400 children in Title I areas who are eligible for the program. The remaining $30,000 in SCE funds are used to serve the 100 eligible children in non-Title I areas.

Under this procedure, the educationally deprived children in Title I areas, taken as a whole, receive only 60 percent of the SCE funds rather than the 80 percent which the children residing in Title I attendance areas in LEAs No. 3 and No. 4 above received in accordance with the proportional distribution requirement. ($45,000 in LEA No. 6 versus $60,000 in both LEAs 4 and 5).

The policy of combining or pooling Title I and SCE funds by the fifth LEA in the example above is, in our opinion, inconsistent with the current statute, regulations, and OE interpretations. The LEA, in distributing SCE funds, has, in fact, penalized eligible children residing in Title I project areas. $15,000 in SCE funds which, but for the existence of Title I, would have been provided to the Title I project areas, have been allocated instead of non-project areas.

The penalization of children residing in low-income areas resulting from pooling Title I and SCE funds in a manner that ignores the proportional distribution requirement is similar to the penalization of such children by LEA No. 2, described in a previous example. The funding scheme used by LEA No. 2 (p. 242) was deemed illegal because the LEA, which was required to distribute SCE funds to schools according to their incidence of educational deprivation skipped schools eligible for Title I, resulting in Title I paying for services which SCE would have paid for in those schools, but for the existence of Title I.

Given that the procedures used by LEAs No. 2 and No. 6 are illegal, the question remains whether the law should be changed to allow practices such as skipping schools which would have received assistance under a SCE program and pooling Title I and SCE funds.

This issue involves the accommodation of the Title I policy of serving educationally deprived children residing in low-income areas and a state or local policy of serving educationally deprived children wherever they may side.

The requirements pertaining to supplement, not supplant and equitably provided strike a balance between these two policies. They encourage states and LEAs to provide SCE programs to educationally deprived children both (a) who live in Title I eligible areas but are not served because of insufficient Title I funds and (b) who live in ineligible areas. Supplement, not supplant and "equitably provided" simply require that Title I eligible children, as a group, receive their fair share of SCE funds in accordance with objective, non-discriminatory criteria established by the state or the LEA.

Because Title I is not fully funded many educationally disadvantaged children in low-income areas receive no Title I services. Without these requirements, SCE programs could ignore completely these unserved children and could serve only children in areas not eligible for Title I programs. Elimination of the supplement, not supplant and equitably provided requirements would create an incentive (a) to provide state and local supplemen[illegible]rograms only in areas ineligible for Title I and (b) to use Title I funds to provide the same supplementary services in Title I areas. Such a policy would deprive children who are eligible for but do not receive Title I services of access to state and locally funded supplementary programs. The supplement, not supplant and equitably provided requirements assure that a state or LEA does not discriminate against such children in the provision of supplementary programs to educationally disadvantaged children. These requirements do not demand that SCE programs serve the same children or have the same objectives as Title I, but they do require accommodation of a primary goal of Title I: providing supplementary services for educationally disadvantaged children residing in low-income areas. Title I was not intended to provide merely those services educationally disadvantaged children would have received from SCE programs, if Title I did not exist.

E. LEA No. 7: An LEA Expending Substantial Sums for Compensatory Education

In this example, we will assume that there are some levels of supplementary services and funds which would enable an LEA to provide programs of sufficient size, scope and quality to meet all the special educational needs (an optimally sufficient program) of all educationally deprived children in grades K-12, in both Title I and non-Title I areas. We will assume (a) that LEA No. 7 raises or obtains SCE funds in an amount which, when added to the Title I allocation actually received, reaches such a level and thus enables the LEA to provide all educationally deprived children, K-12, with a fully sufficient supplementary program, and (b) that the LEA desires to provide all educationally deprived children in all schools (Title I and non-Title I) with such a program.

When the equitably provided requirement is applied to an LEA meeting assumptions (a) and (b) above, the following unintended consequences result. First, the LEA will not be able to serve all educationally deprived children residing in non-Title I areas with SCE funds. Second, in Title I areas, the LEA will have Title I funds in excess of the amount necessary to provide a program of optimal sufficiency for all Title I eligible children. This result is a mathematical consequence of the total amount of funds (Title I and SCE), for supplementary services for all disadvantaged children in an LEA (K-12) approaching a level adequate to provide a program of optimal sufficiency. The existence of this result acts as a disincentive for an LEA to attempt to provide all educationally deprived children with an optimally sufficient program.

The following example illustrates this disincentive.

Assumptions

(1) The present Title I allocation is $200,000;

(2) The present SCE allocation is $300,000;

(3) There are 1,000 educationally disadvantaged children in grades K-12, i.e., functioning below the 50th percentile. 800 are in Title I areas; 200 are in non-Title I areas. They are distributed by schools as follows.

Title I		Non-Title I	
200	200	50	50
200	200	50	50

(4) If Title I were fully funded the LEA's entitlement would be $400,000, or $500 per Title I eligible child ($400,000 ÷ 800 children);

(5) $500.00 per child would provide an optimally sufficient compensatory education program. 128/

(6) The amount required to provide all educationally disadvantaged children with $500 in supplementary services is $500,000 (1,000 children x $500).

(7) With the $500,000 available from Title I and SCE, the LEA wants to provide a $500 supplementary program to all educationally disadvantaged children.

When the equitably provided requirement is applied the following calculations must be made:

- o Since 800 of the 1,000 educationally deprived children reside in Title I areas, 80 percent ($240,000) of the $300,000 in SCE funds must be used for Title I eligible children. The remaining $60,000 may be used in non-Title I areas.
- o Thus, there are sufficient SCE funds to provide 480 Title I children with a $500 per child program ($240,000 ÷ $500 = 480).
- o There are sufficient SCE funds to provide 120 educationally deprived children in the non-Title I area with a $500 per child program ($240,000 ÷ $500 = 120).
- o Now that SCE funds have been equitably distributed, Title I funds are allocated to the remaining 320 educationally disadvantaged children in Title I areas.

128/ The $500.00 figure was arbitrarily selected by the LEA as constituting an optimally sufficient program as distinguished from a program that is necessary to meet minimum notions of sufficiency. The problems of objectively defining what constitutes an "optimally sufficient program are described infra at P. 265 of the text.

The amount of Title I funds needed to provide a $500 per pupil program for these 320 children is $160,000. This leaves $40,000 of Title I funds unused. 129/

- $40,000 is the exact amount needed to provide a $500 per pupil program to the remaining 80 educationally disadvantaged in non-Title I areas who receive no SCE funds ($30,000 ÷ 500 = 80).

If the equitably provided requirement had not been applied in step 1 above, but rather the LEA had been permitted to combine SCE and Title I funds, the LEA would have been able to provide a compensatory education program in the amount of $500 per pupil for every educationally disadvantaged child in grades K-12. The calculations are as follows:

- The total amount available from Title I and SCE equals $500,000.
- The total number of eligible children in the district is 1,000.
- By dividing $500,000 by the $500 figure, it is clear that all 1,000 educationally deprived can receive a compensatory program in the amount of $500 per pupil.

129/ If all Title I funds are used for Title I eligible children, $50 additional per Title I child would be available to provide a total Title I-SCE program for Title I children in the amount of $550 per child.

In earlier parts of this chapter, we showed that the supplement, not supplant and equitably provided requirements operate to ensure that SCE funds are used to provide supplementary services not only to educationally disadvantaged children in areas ineligible to receive Title I funds, but also to children who are eligible to receive Title I funds, but do not receive them because Title I is under-funded. However, the example above illustrates that when the total amount of Title I and SCE funds is sufficient to provide an optimally sufficient program for all Title I eligible children, the further application of the supplement, not supplant and equitably provided requirements means that Title I children will receive a program that is above this level and other educationally disadvantaged children not residing in eligible areas will be funded below this level. The practical effect of this may be to provide a disincentive for states and LEAs to increase SCE funding, once the amounts of Title I and SCE funds used in Title I eligible areas reaches this level.

In fashioning a recommendation the question remains whether it is possible to objectively define an "optimally sufficient" program? We profess no expertise concerning what levels of funds and services would provide a program so well funded that additional funds could not be effectively used to enhance the educational opportunities of educationally disadvantaged children. We are aware of no body of information which would enable this level of optimal sufficiency to be determined.[130] Nor are we aware of states or school districts which claim to provide this level for *all* educationally deprived children. This level of optimal sufficiency may be substantially higher than the program level provided in any school district. However, we need not resolve this issue since the purpose of this example is simply to illustrate a problem resulting from the application of the supplement, not supplant and equitably provided requirements when an LEA's combined SCE and Title I funds approach this level of sufficiency, whatever the threshold may be.

130/ Moreover, since costs and programs differ among schools, districts and states, and "educationally disadvantaged children" have a wide range of different problems, no single dollar figure per pupil or ratio of supplementary funds to base funds is likely to reflect this level for all children or groups of children.

Since we doubt that the tools exist to establish such a level beyond dispute, we are not particularly concerned that an LEA, because of the supplement, not supplant and equitably provided clauses would be required to provide Title I children with funds in excess of the amount necessary to provide a program of "optimal sufficiency." We are more concerned that at some point an LEA or state may feel a disincentive to increase outlays further for SCE programs, due to the fund distribution requirements of these clauses. The points at which different states and LEAs may begin to feel this disincentive will be as varied as the different opinions educators might have concerning the level of funds needed to provide an optimally sufficient program. Given the uncertainty of any measure of an optimally sufficient program, but given the desire of Congress to encourage growth of SCE programs, at which point should federal policy recognize the existence of a growth disincentive and include express provisions to counteract it?

In our view, this point should be when the combined level of SCE and Title I funds employed in the Title I areas of an LEA reaches a level equal to that authorized 131/ by Congress for Title I in that LEA. At that point the continued application of the supplement, not supplant and equitable distribution requirements means that an LEA must use amounts of SCE funds in Title I areas, which when combined with the Title I funds in those areas, exceed the level of funds which the federal government, itself, is willing to authorize for compensatory education in those areas. This is a practical point at which, from a policy perspective, states and LEAs may feel that the federal government is asking them to do more for Title I areas than Congress, itself, has determined should be done. Thus, states and LEAs may, for this reason, feel a disincentive to increase the growth of their SCE programs.

We do not suggest that the Congressional authorization for Title I can be empirically validated as providing an optimally sufficient education for educationally deprived children. Our selection of this standard is based on the policy considerations stated above and the recognition that at some point there is a need for a federal provision counteracting the disincentive states and LEAs may feel.

131/ Not the amount actually appropriated, but the amount authorized to be appropriated.

Thus, we recommend that once the total of SCE and Title I funds used in Title I eligible areas reaches the level of the fully funded Title I authorization, the LEA should be exempt from the supplement, not supplant and equitably provided requirement, with respect to the distribution of additional SCE funds used to bring supplementary programs in non-Title I areas up to this same level (measured by dollars per educationally deprived child served by the supplementary program in Title I eligible areas).[132] Above this level of supplementary funds per pupil, SCE funds would again, be subject to the supplement, not supplant and equitably provided requirements.

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[132] Of course, new provisions implementing this exemption should include standards which ensure that the state funds deemed to qualify an LEA for this exemption are in fact SCE funds providing services "comparable" to Title I. The standards necessary to accomplish this result are discussed in Chapter 7 of this paper. Also, the proceudres we recommend in Chapter 7 for ensuring compliance with these standards are fully applicable to our recommendation here and should be so applied. In passing, we should also note that the LEA should not be exempt from Title I comparability requirements. Only the SCE funds should be excluded from comparability computations (see Chapter 7). Other state and local funds and services should continue to be subject to comparability requirements to ensure that no discrimination in base funding occurs.

Under the terms of this recommendation, LEA No. 7 would qualify for an exemption from the supplement, not supplant and equitably provided provisions because the amount authorized for it by Congress is $400,000 and because the LEA provides a supplementary program in the amount of $500 per child for all 800 Title I eligible children, K-12 (800 x $500 = $400,000).

The question remains whether an LEA (LEA No. 8) should qualify for an exemption from the supplement, not supplant and equitably provided provisions with respect to the distribution of SCE funds where (a) it satisfies the fully-funded standard described above, but (b) like LEA No. 6 (from the previous example) provides a comprehensive supplementary program only for a particular grade span, e.g., K-6?

Under the terms of our recommendation, LEA No. 8 would qualify for the exemption. The rationale for allowing the exemption for LEA No. 8 (which, like LEA No. 7, satisfies the fully-funded standard) and not allowing an exemption for LEA No. 6 (which does not satisfy the fully-funded standard) is identical to the rationale for allowing an exemption for LEA No. 7. Both LEA No. 7 and No. 8 provide supplementary services to Title I eligible children in the amount that Congress had determined should be provided under Title I, i.e., the total amount authorized by Congress for the LEA. LEA No. 6 does not. We recognize that in both LEA No. 6 and No. 8 some Title I eligible children in grades 7-12 are not served. The failure to serve all eligible children was the basis for not recommending that LEA No. 6 be exempt from the supplement, not supplant and the equitably provided clauses. However, in the fully-funded situation, LEA No. 8, if not exempt, would be required to provide a higher level of supplementary services in Title I areas than Congress itself has determined should be provided. An LEA which decides to use the total amount authorized by Congress for a particular grade span (e.g., K-6) instead of for all children in grades K-12, is no less entitled to an exemption. LEA No. 8, which has defined an "optimally sufficient program" at a higher level per pupil than LEA No. 7, is equally deserving of an exemption as LEA No. 7.

Our recommendation for an exemption from the supplement, not supplant and equitably provided clauses is based on Title I's long history of underfunding and the incentive this recommendation would create for states and LEAs to close the gap between amounts appropriated and authorized for Title I. At such time as Title I is fully funded, or nearly so, this incentive will no longer be needed, and should be reviewed,[133] and probably terminated since full funding of Title I would eliminate the justification for our proposal (Our proposal's effect at that point would be solely to encourage states and LEAs to discriminate against Title I eligible children in the allocation of SCE funds.)

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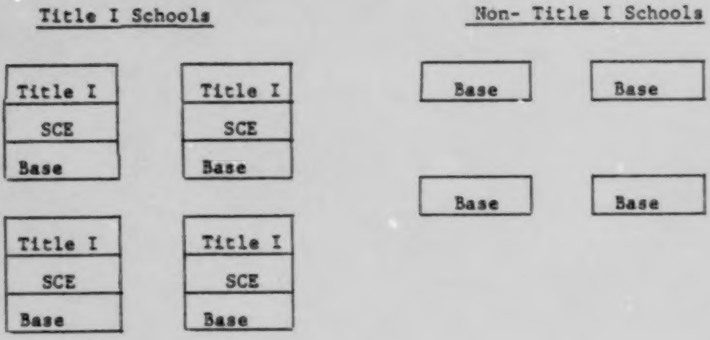
[133] This would include an examination of the need for funds above the level of Title I's authorization for educationally deprived children. See also the discussion in note 129, supra.

Because this exemption is designed as an incentive to fund supplementary programs in non-Title I areas at the same level that Title I if fully funded, would provide in Title I areas, once this level is achieved in non-Title I areas, no further exemption is warranted. Exempting SCE funds above the level specified in the previous sentence would permit an LEA to discriminate against Title I areas by providing a higher level of supplemental services to non-Title I areas. Consequently our recommended exemption terminates at the point that SCE funds provide supplementary services in non-Title I areas at the same level that Title I, if fully funded, would provide per served pupil in Title I eligible areas. Additional SCE funds would be subject to the supplement, not supplant and equitably provided requirements.

Also, if our proposed exception to these requirements were continued when Title I is fully funded, it would have the deleterious effect of encouraging LEAs to take funds from the base and use these in SCE programs that serve only children ineligible for Title I services -- an effect which the equitably provided, supplanting and comparability requirements are designed to prevent.

F. State Compensatory Education Funds Provided Only In Title I Schools

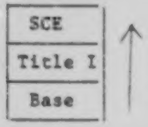


In this situation *all SCE funds* are distributed to children attending *Title I schools*. Although educationally deprived children residing in *non*-Title I areas receive no SCE funds, there is no violation of the supplement, not supplant or equitably provided provisions. Since the primary purpose of these provisions is to ensure that Title I funds are *supplemental* and *not* used to supplant state and local funds, they only protect Title I areas and program participants from discrimination. The purpose is *not* to require intra-district equality, although that may be one of its effects. Thus, the federal statute does not prohibit states from providing "overly-favorable" treatment to the participants in Title I programs.

G. State Provisions Requiring SCE Funds To Supplement and Not Supplant Federal Funds

In this example, assume that the SCE legal framework provides, in part, that "a district shall use the state funds for *specifically identified students* to *supplement and not supplant the use of federal monies*." To comply, the LEA, would allocate to a particular child, state and local base, Title I funds and SCE, in that order:

Child A



Ostensibly, this provision is intended to ensure that *children* receiving Title I funds also receive their fair share of SCE funds; rather than using SCE funds to meet the needs of children eligible for but not receiving assistance under Title I. If so, the intended effect of this provision is consistent with the basic purpose of the Title I legal framework which is to prevent penalization. But the language of this state requirement that federal Title I funds be distributed before state compensatory education funds is inconsistent with the Title I requirement that state compensatory education funds be distributed first, *without regard* to the availability of Title I funds.

This problem has the same derivation as that encountered by LEA No. 5 *supra*: the phrase "without regard to." Rather than requiring LEAs to "ignore" or "disregard." Title I funds, the supplement, not supplant and "equitably provided" provisions should be clarified as suggested supra., so as to ban only penalization of, or discrimination against, Title I areas or project participants. As we have shown, supra., an LEA can, in certain circumstances, take Title I funds into account in the distribution of SCE funds without penalizing Title I eligible children. The regulations and statute should make clear that so long as penalization does not result, taking into account Title I funds should be permitted.

Mr. **SILVERSTEIN**. Thank you for the opportunity to share some of my thoughts concerning the relationship between Title I and state compensatory education programs.

The Legal Standards Project of the Lawyers' Committee under contract with the National Institute of Education has conducted a comprehensive analysis of the Title I legal framework. This analysis began in July of 1975.

The purpose of the project was to determine what additions, deletions or modifications to the existing legal framework were necessary to improve the administration of the program.

Specifically, we analyzed the necessity, flexibility, consistency, and clarity of the Title I statute and regulations pertaining to, first, requirements local school districts must comply with in order to receive assistance under Title I, such as parent involvement, school attendance area eligibility, supplanting, comparability; second, the administrative functions states must perform in satisfaction of their oversight responsibilities, including, for example, application approval, monitoring and enforcement; finally, we were asked to analyze the relationship between Title I and state compensatory education programs.

Although we studied different aspects of the Title I legal framework, we did reach several general conclusions.

First, given the congressional declaration of policy that Title I funds must be used to expand and improve the educational programs of educationally deprived children residing in low income areas, the general statutory stucture is sound. The requirements are necessary to maximize the likelihood that this general intent will be accomplished.

Two, the statute and the regulations permit maximum flexibility to design and develop innovative programs within the context of the declaration of policy I described earlier.

Three, the regulations are generally consistent with the Title I statute.

Finally, the regulations are not sufficiently clear. The standards do appear in the regulations, but there are no declarations explaining how these standards apply on a day-to-day basis. There are no examples, there are no illustrations of acceptable and unacceptable practices.

What is most interesting in terms of our findings is that these interpretations or clarifications do exist. OE has prepared them. In fact, in our opinion, in the main they have done an excellent job. The problem is a problem of dissemination.

These interpretations often exist in letters or correspondence that are sent to one or two LEAs or state departments. They are not in the *Federal Register*, they are not widely disseminated.

As a result, one of our major recommendations of our study is that Congress mandate the establishment of a manual, and that examples and illustrations be contained in the regulations.

Let me now summarize our major findings with respect to the relationship between Title I and state compensatory education programs. Now I will be referring to the outline.

The first point in the outline is our general conclusion. In general, the present Title I legal framework does not interfere with the implementation of state compensatory education programs. Most problems have resulted from OE's failure to inform SEAS about the operation of the legal frameowrk.

In other words, there is sufficient flexibility in the present system. The major problem is one of communication and dissemination.

There are, however, two exceptions to our general conclusions. These exceptions will be discussed by David Long following my testimony.

The first point, then, in the outline is that under the present legal framework, school districts are neither required nor encouraged to favor low income areas in the distribution of state compensatory education funds.

Title I simply requires that educationally deprived children residing in low income areas (a) receive their fair share of state and local funds and (b) are not discriminated against in such distribution.

This basic proposition was not always the case. Prior to 1974 the operation of the comparability provisions had the effect in many school districts of requring the favortism of low income areas, even though the state system wanted to distribute money based on educational deprivation.

That was because of the mechanics of the comparability provision, which requires that you compare each Title I school to the non-Title I average. If some non-Title I schools receive state compensatory education funds, that non-Title I average will be raised.

If any non-Title I school did not receive state money, they would, by definition, be noncomparable. This problem was, of course, resolved in 1974 with an optional exclusion from the comparability provision.

Unlike comparability, which at one time did require favoritism, supplanting has never required favoritism of low income areas. It has always been neutral in this regard.

Therefore, the rationale for any proposed exemption from the supplanting provision would have to have a markedly different rationale than any proposed exemption—excuse me—the rationale for a proposed exemption from the supplanting provision would have to have a markedly different rationale than the rationale used for the exemption from comparability.

All that supplanting does is require that educationally deprived children in low income areas receive their fair share.

The second proposition is that Title I does not require that children participating in state compensatory education programs also receive assistance under Title I; that is, Title I funds may be used to meet the needs of the educationally deprived children residing in low income areas, who do not participate in state compensatory education programs. This proposition is expressly recognized in the Title I regulations.

The third proposition is that because Title I is underfunded, large numbers of children eligible for Title I cannot now be served. As a result, any exemption of state compensatory education funds from the supplement not supplant provision would deprive such Title I eligible but unserved children of the special assistance they would have received but for the exemption.

In other words, an exemption would allow a LEA to favor non-Title I areas with respect to the distribution of state compensatory education. This favoritism would be over those educationally deprived children residing in low income areas.

This would be contrary to the present declaration of policy which expressly recognizes the importance of serving educationally deprived children residing in low income areas.

The final point on the outline is that Title I permits the coordination of Title I and state compensatory education programs through the use of comprehensive planning, consolidated applications and joint funding.

In terms of comprehensive planning, I don't really think I have to go into that at great length. My colleague from Ohio already described how it works in practice.

You can take some Title I funds and put them in certain grade levels. You can take state compensatory education funds and go to other grade levels. You could use Title I for the reading program, and the state compensatory education for the support services. This is what again my colleague just described.

In addition to comprehensive planning, Title I permits joint funding. There are numerous alternative schemes for distributing state compensatory education funds that are avaialble to local school districts and to states.

In my opinion, the problem in California resulted because of the particular funding scheme that they choose. There are numerous alternatives available, in fact four alternatives were prepared by the State Department of Education this summer.

They list four alternatives which would be in full compliance with the supplanting provisions and would not cause undue burden.

At this point, I would now like to turn the mike over to Dave Long, the Director of the School Finance Project, who will describe two of our major recommendations with respect to the relationship between Title I and state compensatory education programs.

STATEMENT OF DAVID LONG

Mr. Long. The first recommendation I would like to discuss concerns what I will call a full-funding exemption from supplanting.

One of the major issues here today has been, should there be some exemption from the supplanting provisions when state compensatory programs reach a certain level? We believe there should be such an exemption. However, our exemption may be a little different than others that may be proposed. I will try to describe our recommendation. In the background of the recommendation, let me summarize some of the things that have been said.

In '74, there were changes in the comparability regulations to accept state compensatory programs, bilingual special education programs as an incentive to increasing the funding of those programs to serve two kinds of children. These two kinds are important to bear in mind.

The first kind is educationally disadvantaged in a non-Title I area in a non-Title I school. The other child is a child qualifying for Title I in a Title I area but because Title I is not funded, receives no services. That is the child I think requires some concern, particularly in the way of Federal policy.

Mr. Silverstein mentioned another incentive presently contained in the regulations for coordinating state compensatory aid and Title I. That is even in Title I areas Title I and state compensatory education programs don't have to serve the same children, we are not talking about layer state compensatory programs on top of Title I or vice versa. With the large pool of children not being served there is ample opportunity in Title I areas to coordinate the state and Title I programs for those children.

We concede that at some point the incentive contained in the '74 amendments may evaporate at some point, there may be a disadvantage to increase state compensatory funding. Some might argue this occurs when the funding of combination of Title I funds and state compensatory education funds reaches some theoretical level of optimal efficiency. This would be a point where all are served and the addition of any fund or disadvantaged children would provide no benefit to those children. We doubt the tools exist to determine some point of optimal efficiency beyond which compensatory funds would be wasted. We wish there was a way to determine it but we doubt it.

We expect state and local educational agencies are likely to suggest some diverse points. However, we would recommend as to the administration of supplanting avoids this whole debate as to optimal efficiency. It would be triggered when Title I funds available in Title I areas reach the level Title I itself would reach if it were funded. We believe this standard is objective, requires no external validation and is consistent with the policy expressed in Title I.

The effect of this exemption would be that once the total combined level of funding in a state such as Ohio or California in the Title I areas reached this level of the Title I appropriation as a result of combining Title I and state compensatory education funds, that the LEA could hold its funding level in Title I areas at that level and then bring the level of funding for educationally disadvantaged children in non-Title I areas up to that level so they reach a parity at the per-pupil level at which Title I is funded.

Coupled with our recommendation we would suggest once the total level of funding in both Title I and non-Title I areas is reached, the exemption cease. The reason is if you continue the exemption after parity has been achieved, the continued applications would permit LEA to discriminate against children in Title I areas by supplementing the funding in non—Title I areas. So, once the parity has been reached then supplanting and equitably provided would go back into effect and a proportionate share of local funds would have to be provided again in Title I and non-Title I areas.

The second recommendation concerns the possibility of providing an exemption from the comparability requirements of certain kinds of general aid programs. One has been discussed here today, the early childhood education now becomes the school improvement program in California. To what extent should such programs which provide types of general aid which go to children, all children in particular schools, be exempt from comparability?

As has been mentioned, there are exemptions from comparability in the '74 programs. The major problem we see from not having an exemption is the difficulty of phase-in. If you only fund one-third, say, ECE and if you only proportionately provide funds to Title I and non-Title I areas, the Title I schools which don't receive a program such as ECE may be out of compliance because the non-Title I has increased.

We didn't make a specific recommendation in our two-year study concerning whether such an exemption should be given. Rather, we considered the problems raised by any such exemption which would allow Title I schools to fall below the service and funding level of non-Title I schools since this is essentially the issue.

We believe that without stringent safeguards, such an exemption, if Congress desired to enact it, has the potential for masking substantial inequalities in state and local base funds. A common characteristic of general aid programs is that they are designed to benefit all children. This fact alone makes it very difficult to determine who is receiving the service and perhaps even more importantly who is benefitting from the service which are two quite separate questions.

In fact, educationally advantaged children may benefit from programs generally even more than educationally disadvantaged children.

As an example taken from California, not to be taken as criticism, I think it is admirable for California to take on such a program as ECE, but a recent study of ECE found the structuring of certain schools was of greater benefit to the higher achievers than those of substantially lower grade level. In other words, it was of no benefit to the children who were the recipients of Title I aid.

As one who has dealt with educational issues for a number of years, I am painfully aware of getting a handle on what exactly is happening as a result of a label put on a program. Any loophole which exists to exempt general aid funds from comparability may put names on programs to qualify them for exemption. Consequently, we recommend any request for exemption of general aid programs from the comparability requirements should be required to provide a heavy burden of justification as to availability of safeguards in the actual administration of the program. Our study has suggested a number of safeguards. Briefly, these recommended safeguards would be a clearly identifiable program pursuant to state law, that it provide supplementary service, have performance objectives, learning achievement, and assure that all children in the school are served, so the programs can't be put aside and merely serve the high achievers. Also, that there be a three-year phase-in limit. The justification of the phase-in program is, we believe, the most pressing one. In addition, the percentage of educationally deprived participating in the program be as high at least as their percentage in the district as a whole. An additional safeguard should be the LEA report to the state as to compliance with these requirements.

We are not making any specific recommendation that Congress do or don't adopt such exemption. Our major concern is with the difficulty of safeguarding the exemption and assuring certain safeguards.

Mr. KILDEE. I have no questions.

Mr. Miller.

Mr. MILLER. I have a couple of questions.

In your recommendations, could you explain to me how that differs from what California was doing with the EDY funds?

You say you would talk about an exemption if you had the following protections, that is that there was a very clear program which was to supply supplemental services to all children through your Phase I, but isn't that what the educational program for disadvantaged youth was?

Mr. LONG. Let me clarify my point. My last point was really as to ECE. The allegation in the Richmond suit was state compensatory funds allocated in the same way as Title I. They are already exempt from comparability under the '74 amendments. The issue in the Richmond case was compliance with supplanting.

Mr. MILLER. Then you will have to take a moment here to educate me because, as I read Mr. Whiteneck's statement, page 5 in the *Alexander* v. *Califano* case indicates the concern. He says, second-to-last sentence, "Instead it would require reallocation of state EDY funds, so that would mean that only a portion of the Title I eligible elementary schools will be served by EDY."

Mr. SILVERSTEIN. My name is Mr. Silverstein.

On page 5, Mr. Whiteneck's statement deals with supplanting as opposed to a comparability problem. In terms of addressing the question, I think I would like to go back to two quick points on the outline, two propositions which we have concluded describe the present legal framework.

The first one is under the present legal framework, Title I doesn't encourage favoritism of low-income areas. All that is required is that educationally disadvantaged children residing in low-income areas receive their fair share of state compensatory funds and children in low-income areas not be discriminated against as to state compensatory education funds.

The second point is that Title I doesn't require that the children participating or receiving compensatory education funds also receive Title I on top. State comp aid can be used for certain kids in Title I areas and Title I eligible and unserved.

The question in the Richmond case or the contention on page 5 I can answer in two ways: First of all, in the Richmond situation, the children in the highest ranked schools, based on both educational deprivation and low income, received approximately $345 per pupil.

The lowest rank schools, the schools which have the fewest educationally deprived, the fewest low-income children, received approximately $476 per child, approximately $135 more per pupil and just on a per-pupil basis there was that degree of discrimination between low-income areas and the non-low-income areas.

The fact of the matter is that Title I has a focus on low-income areas. If Title I requires that you treat educationally deprived children in low-income areas fairly, that may mean you distribute funds to the high schools, the low-income, educationally deprived children in low-income areas. The question is whether they have any greater or less need than the children in the elementary schools.

All we are saying is that educationally deprived in low income receive their fair share. The problem with the Alexander situation was the scheme the state used. There were other alternative schemes which were developed by the State of California submitted to the LEA in draft form showing how they could comply and they are flexible and in compliance with Title I.

Mr. **Whiteneck**. I agree, except that the four alternatives would not be disruptive to a school district. I think they would be.

He is correct regarding the specifics of the Richmond case. Our contention is that in order to keep from having that disruption that the school districts, or the states I should say, be permitted under the new state law and hopefully under the new federal act, to aggregate all of the state and federal funds accounting for them separately. I don't want to be misleading there, but consider them as an aggregate in the allocation, so that if a school district receives a certain amount of money from Title I to meet its theoretical gross need that we take state funds and meet the needs. Then they can allocate from the local level based on the educational needs.

The conflict comes in where we must distribute the state dollars to the districts regardless of the federal allocation and then they get federal allocation on top of that. When you stack the two, we have some districts in California which receive upwards from eight to nine hundred dollars per pupil and other districts receive only three or four hundred dollars per pupil even when we have $4 million going into the program. You have kindergarten through eight districts which, in essence, top out and you just keep topping funds.

It is our contention that we should be able to have a gross need in California identified for the disadvantaged. We should be able to amass state and local funds to meet that need and allocate to districts on the basis of how many of those children they have in that need.

We recognize in Richmond there are some technical difficulties in what they did in the past. We have recommended four alternatives to the court and to the school district, but I don't think it is proper to say that it would not be disruptive, because you would be moving some disadvantaged youth money, state money, out of certain schools to other schools; you would be moving some Title I moneys out of certain schools to other schools.

I think it is a practical problem, not necessarily a legal or technical problem. You would have, for instance, Title I schools in certain neighborhoods which have had Title I going on for 12 years, since '65, and they would, in essence, lose their Title I funds and those funds would be moved on to other schools. It is a question of whose money do you use, state or federal, and we are saying we should be able to recognize both in the delivery of those services. That is what we are after.

Mr. **Long**. If I may just briefly respond.

I can't, I guess, respond very cogently with the disruption arguments. I think that is an issue which has to be dealt with as a result of greater facts available to the committee or me at this point.

But one mitigating factor as to disruption is that Title I in EDY funds could be used for the same thing, so if the problem is paying for teachers out of the wrong pocket, that will not disrupt anything at the school level. There are many methods of creating a flexible program, many of which are now in place in Ohio and described in both the State of California's memo and our study, which would allow, I think, Richmond to do most of the things they want to do. I don't know what they have done, so I don't know what the disruption issue is. But it is important to highlight the real issue here and I think there is only one issue, and that is to what extent should those children, not served in Title I areas who are eligible for Title I funds but are not served because Title I is not funded, be penalized in distribution of state comp education funds, because the state wishes to favor educationally disadvantaged children who are not in Title I areas.

Our recommendations deal with that by suggesting that the point at which that concern ceases is where the amount of funds which Congress would have provided if Title I were fully funded is available in the Title I areas. I believe California is pretty close to that level. I am not sure they are right at it, but perhaps with a few more dollars they would be able to qualify for the exemption we are proposing. Maybe that would deal with the problem.

Mr. **Whiteneck**. In '79 or '80 we will have reached their criteria because we will have attained almost a 50/50 relationship between federal and state dollars.

Mr. **Miller**. What will that allow you to do?

Mr. **Long**. It would allow the LEA to hold constant the number of supplementary dollars for compensatory education programs in the Title I area, until such time as the funding level in the non-Title schools is brought up to that level.

Mr. **Miller**. Jack, do you have some questions?

Mr. **Jennings**. I would appreciate it if Mr. Whiteneck could comment particularly on what the Lawyers' Committee has recommended as the criteria to be used for the two types of waivers recommended in their statement on page 38. They are saying as regards compensatory education programs which are operated by a state, that there could be a waiver from certain Title I provisions if three criteria were met.

Then they say farther back on page 45 of their statement that as regards broader types of programs, broader reform, general aid types of programs such as California'a early childhood education program that, again, a waiver could be possible under certain conditions and they describe those beginning in the middle of the page going down to the end.

Are these the types of conditions which you believe are reasonable in terms of California's experience?

Mr. **Whiteneck**. Listening to them, as I commented a minute ago, I think yes. Let me take them in reverse order. The comparability, I believe California conforms to every one. Clearly identifiable program, it does that. Provide supplementary service based on performance objectives, it does that. Implement a philosophy all children should be equally served, it does that. Phased in within three years, it doesn't do that. Our phase-in program is under the state legislature. ECE received its first funding in '73-'74; we are now at '77-'78 and we are at the 55 percent of implementation. More than half of that addresses schools less disadvantaged. Under the School Finance Act, by the end of '79-'80, the kindergarten through sixth grade will be at about the 55-percent level, but the grades seven through twelve will only be at the 12-percent level. To get a hundred percent phase-in in three years we would not meet that criteria.

Mr. **Jennings**. Do you see the merits of some sort of criteria so the state can't use the existence of a program on books which it doesn't adequately fund as an excuse to waive Title I funds? Do you see the time period when a state might phase in such a program?

Mr. **Whiteneck**. Yes, or in compliance with Criteria No. 5, that you would phase in all the disadvantaged schools at a greater rate than the nondisadvantaged.

We have some 500 of a thousand districts in California fully funded on ECE, so every disadvantaged school—I think you can only find two or three of the large school districts where all the disadvantaged are not in ECE. Virtually every school district in California, the most disadvantaged schools which are Title I eligible, have ECE. So we have reached that point.

The issue now comes to where we start moving grades 4-12, then the question comes to where you pick the most disadvantaged, or the non-Title I school, the minute they do that, it raises a problem of comparability. But they must reach the school which comes into the program, the most disadvantaged in rank order. That's where you run into the problem. Until such time you are able to address all the disadvantaged schools, you have a problem.

But Criteria 4 and 5 would not be a problem to us.

In some schools we have—not every single account from preschool through adult education at that school is accounted for separately, so we don't have any problem.

The only problem which seems to be a problem is No. 4.

Mr. **Jennings**. So as to reform programs such as ECE, it sounds as though your testimony would be relatively close.

Let me ask you one question which Chris Cross has brought up: As we understand the California program, one of the conditions is that a school can only expand under ECE if it has demonstrated success in form. What kind of complication would that present in having a requirement in phasing in a program in a certain program?

Mr. **Whiteneck**. It is not a school gets to expand, a district gets to expand. A district is eligible to add additional schools to its program if collectively the schools already in the program are successful. So the scores of the disadvantaged and the non-disadvantaged schools competing in the program compete on a district basis with all other districts and a district which is successful, quote, unquote, is allowed expansion funds. They must then select and, again, first the disadvantaged then non-disadvantaged added to the programs. So, you get districts competing to add schools to the program.

Mr. **Jennings**. Do you believe that would present a problem, Mr. Long, or Mr. Silverstein?

Mr. **Long**. We would want to think about that a little more.

Mr. **Whiteneck**. Excuse me, Mr. Jennings, may I clarify a point on that success?

Mr. Long mentioned a study that I don't want to let go by as far as success.

Mr. **Jennings**. I saw you making notes on that.

Mr. **Whiteneck**. The study he is citing is what we call the lower 20 percent study, we would be happy to submit to the committee a full review of that lower 20 percent.

Mr. **Jennings**. Was this a study done for the Office of the Legislative Counsel for UCLA?

Mr. **Silverstein**. The one we are referring to was done by the California State Department of Education.

Mr. **Whiteneck**. UCLA studied the department's study, that's what occurred. They said that if you take the entry exams which were given to kindergarten and first grade children in all the schools, not just Title I schools, but all the schools, you take the lower 20 percent on that entry level exam and you project what their expectancy of achievement would be at the end of the third grade, they should fall within an expectancy band. So you had 80 percent of the students up here, 20 percent down here. Everybody has an expectancy range that when you reach the third grade you should be within tolerance. What occurred is that when you do that at the end of the third grade, we found that if you started out low, you were below your expectancy band. So if you started out in the bottom 20 percent of the program after three years you were below your expectancy band.

Many have indicated that is a negative against the ECE program. To a degree it is a negative against all the aggregate programs which fund the school, ECE being the system to bring those funds together.

We have done a very comprehensive study of some of the factors, we put bilingual staff with other specialized staff and visited a number of schools and issued a report to the legislative analyst within the last three weeks to indicate what we found out.

We found out such things as the principals and the teachers really didn't want the program. The teachers didn't have a clearly defined program, regardless of the funding, regardless of whether ECE was there or not. I think the study was a comprehensive study of some of the factors which could lead to program success.

Mr. **Jennings**. If we could go back to the other program, the disadvantaged youth program, which is more comparable to Title I, on page 38 of Mr. Silverstein's testimony, he says the Lawyers' Committee has recommended that a waiver could be granted to a particular state for a program such as EDY under certain conditions, then if I understand it correctly, he spells out those conditions under ABC.

Regarding California's experience, what would your comments be on those three conditions?

Mr. WHITENECK. I would say we basically agree with what they have laid out there. If I understand specifically the recommendation, it would permit continuation of our problem where we have some EDY funds going into non-Title I economically eligible schools so long as the Title I schools, in essence, are fully served.

Am I correctly interpreting your page there, without studying it?

Mr. JENNINGS. Don't you have two different recommendations? One, an underfunding situation where you don't have an equal amount of local funds, if there were full funding of Title I and if that condition pertained there would be another condition; but this recommendation has to do with the underfunding situation where you don't have an equal amount from the state and federal government.

Mr. SILVERSTEIN. The present sytem works based on a combination of statute and regulations.

Mr. JENNINGS. It should be pointed out that in your testimony you said even though there is some flexibility under the present law, the Office of Education has been consistent in giving out letters of interpretation to clarify this, there is quite a bit of ignorance as to state and local people because the Department of Education has not made an effort to set forth a consistent set of regulations and this is at the root of the problems of a number of programs.

Mr. SILVERSTEIN. That is right.

Mr. WHITENECK. The issue I raise in my testimony is raised by the non-public schools in California. As presently interpreted, unless you distribute Title I funds to those schools, then they no longer are eligible to receive Title I services in the non-public school areas. Possibly, that is a misinterpretation, but that is the interpretation we now have and the non-public schools are fearful if we allocate state funds first and, in essence, change the funding structure within certain target areas that non-public school children will be denied services that have been getting those services.

Mr. SILVERSTEIN. We deal with this issue in a paper entitled, "A Description and Analysis of the Relationship Between Title I and State Compensatory Education Programs," on page 282, for the record. (See Mr. Silverstein's prepared statement and supplementary materials.) We say there is a problem in terms of lack of sufficient clarity in the existing regulations with regard to this issue. But when you examine the regulations and look at the overall purpose of Title I, we have concluded there is not statutory problem and any problem which does exist can be addressed by regulation. If you would like, I can go into the problem and then describe how we feel it can be relieved. Or just leave the reference.

Mr. JENNINGS. If you will leave the reference.

Mr. SILVERSTEIN. We do address the issue and make specific recommendations.

Mr. Jennings. Again, it seems even though you are on opposite sides in the Richmond situation, your testimony today is very close as to the type of waivers which could be granted for both types of programs in California.

Mr. **Whiteneck.** We feel the Richmond situation is disruptive and the disruption is caused by, quote, unquote, being identified as a Title I school service being identified as a disadvantaged youth school. Even though we have been at it for five years, we have deep feelings among schools who want to be Title I schools and not disadvantaged youth children.

Mr. **Miller.** Let me ask you, for my own clarification, not only because I am from California, but because I am from Richmond.

As I understand it, you have your basic aid in California which will be changed because of the school finance law and there will be some equalization going on. Then the state will come along and there will be some EDY funds based on educationally disadvantaged students. But the minute you do that outside the Title I school, are you saying you run into problems because of non-comparability?

Mr. **Whiteneck.** No, we run into problems on supplanting. If we didn't have any state money in compensatory education, the school district, Richmond, would get their regular base dollar and that would be equal for all the children. Now, they get federal Title I money and they put into the ranked order school after the base program.

Mr. **Miller.** Then they put in the Title I money?

Mr. **Whiteneck.** Correct.

Mr. **Miller.** Then they used EDY money based upon the school board's decision?

Mr. **Whiteneck.** Right. And when they did that, they took some of the state disadvantaged youth money and they put that on top of Title I and in other educationally disadvantaged schools not necessarily Title I.

Mr. **Miller.** What would happen in a state where you didn't have an EDY program?

Mr. **Whiteneck.** Richmond would be O.K.

Mr. **Silverstein.** The problem in Richmond is, if I may step back, that state law requires that EDY funds be distributed in rank order, based on educational deprivation receives first.

Title I says that state and local funds must be distributed without regard to the availability of Title I funds. You can't penalize the children.

What happened in Richmond is that School A is the highest ranked based on educational deprivation. It was decided we are not going to give them state comp aid, we will give them less than they would have received. We will give them Title I.

They will go to the next based school that was supposed to get state comp aid and they give them Title I. Then they used the state comp aid they received and used it in non-Title I areas. The result was that money which could have been used to provide compensatory education services in Title I areas is no longer available, the "extra" money has been used instead in non-Title I areas.

Again, if you look at what the children in poor areas were given per child, it was $350, $360, or $370 as opposed to the $476 given to the lowest ranked schools with the fewest educationally deprived children. If you had just brought them up to $476, that's probably where the Title I funds would have gone.

Mr. **Miller**. If they had made their determinations on the basis of EDY funds——

Mr. **Silverstein**. Based on state law. The state has a scheme. All Title I says is you set up a scheme, make the scheme objective, it can't discriminate against low-income areas and you follow that scheme. You don't have to keep the present scheme, you can change that scheme and that, in fact, is what California has proposed in terms of four alternative models.

This ranking requirement is only one of four, there are others. You can have a proportional system, where, let us say, there are a thousand educationally deprived children in the school district, 80 percent live in low-income areas, 20 percent in non-low-income areas, so 800 children in Title I areas. All that is required in that case is that 80 percent of the funds, a proportional distribution, be provided into the low-income areas. The other 20 percent may be provided to children in non-Title I areas. Let us say that in hypothetical School District A, the first four schools happened to be in non-Title I areas. Let us say the money runs out after the 4th school. It would be perfectly acceptable for Title I areas to receive no state, comp. ed. funds. All that Title I requires is that you follow it.

Mr. **Whiteneck**. Our concern going into '79-'80 is not so much an allocation from the district level to the schools because, as Mr. Silverstein has indicated, we have provided alternatives to conform to existing law. We have a real problem in allocating from the state level to the district level. What we want to do in the states' allocation of that $190 million of state money is that we want to look at a district's total needs for the disadvantaged and then subtract or take into account how many federal dollars that district is receiving as a district, and then we will fill up the rest of that need with state dollars. That is where we are in basic conflict with the Title I law going into '79-'80. In other words, it is not a problem of Richmond to district level; our problem is from the state to the district level. Otherwise, if we have to disregard Title I and allocate all our state disadvantaged funds first and then Title I is still allocated on the economic criteria to every LEA. Then we will wind up with this disproportionate allocation to a school district where some will get considerably more and some considerably less.

Mr. **Miller**. Why will you end up with that disproportion?

Mr. **Whiteneck**. If we have to allocate from the state to the district, if we have to allocate all the state funds first—let me use two examples, Parlier, Sanger or National City, kindergarten through 8th grade districts and use Richmond, or Oakland or any unified district or some other big elementary district. If we have to allocate the state money first and we come up with an objective formula, poverty, limited English-speaking students and educationally disadvantaged and we go through and allocate $190 million of state funds and suppose that works out in Parlier to $400 per disadvantaged student; but in Richmond, $200, because of this size.

In other words, they get it on this basis.

Then along comes Title I and Title I's existing formula gives money to each of those districts and Parlier gets another $400 per child and Richmond $400 per disadvantaged. Now, Parlier has $400 for each disadvantaged child and Richmond has $600. What we are saying is we want to rectify that disproportionate allocation by saying the federal government will allocate to every school district and we will go along and calculate the gross need in Richmond and Parlier and fill it up and move on to the next one so we won't be stacking a disproportionate amount of state money.

Mr. **Miller**. How would you monitor how your determination of the gross need is met by the local agency? How do you do that under EDY?

Mr. **Whiteneck**. Through the same individual cost accounting we use right now. They would still identify the schools most in need, they would still identify the specific funds paying for specific services in those schools. We still account for disadvantaged money separately from Title I and Title IV money. We are concerned with the allocation from the state to the district level.

Mr. **Miller**. Can you see any practical difference in that or is yours purely a legal interpretation of the difference?

Mr. **Silverstein**. Let me start and then Mr. Long will address the issue specifically, his speciality is school finance reform.

What we are talking about is, there are several anti-discrimination provisions in Title I. One is supplanting and another which is very close, basically, says that state aid must be distributed without regard as to the availability of Title I.

All of our logic, rationale and reason which deals with the supplanting issue applies equally at the state level. There may be a level but we are saying we can't define optimal efficiency, maybe it is 800 for some, and not for others. That's hard. If there were an exemption it would be an exemption based on a maximum level, whether it is the amount authorized or what. It would be the same concept.

Mr. Long will address that.

Mr. **Long**. First, I wonder if we don't have a chicken and egg problem. California suggests it is the federal formula, but I wonder if the problem could not be resolved by a slight modification of the state formula so you do not have the possibility of piling on.

I think a more serious problem in the distributional exemption is, in my experience, working across the country in school finance reform—and what I do most is deal with school finance litigation—I have seen over time the tendency of states to rename categorical programs general aid and vice versa. Every few years you will see a weighted .75 for FDC kids, as was the Bateman formula in New Jersey, turn into a weighting of .11 into a categorical program.

This movement is going on nation-wide. I know of no way in which the federal government can monitor the relabeling problem here because I think as soon as you create this kind of exemption for categorical funds you will quickly find in the next wave of reform that a weighting which went into the general aid will be pulled out and the state would reduce the amount of Title I funds and the state, for political reasons or reasons they might consider more significant, will provide funds to other districts and not provide large cities those compensatory funds.

I see a lot of problems in permitting this kind of exemption, given what is happening out there is school finance reform.

Mr. **Miller**. Let me follow up on that, Mr. Long. Can you tell me in terms of the intricacies where I am wrong?

Title I is given to a state based on the fact there were unequal resources available for a child's education and trying to equalize that. It is based on economic disadvantage. I assume the assumptions that children who live in a concentration of economic disadvantaged families, you found in surveys in '65 and before that, that their schools didn't receive the kind of attention or resources available to children who lived in middle- or upper middle- class areas in the same school district and you had this wide disparity. Then the federal government made the determination something had to be done to address the unmet needs and that's Title I. Is that all wrong?

Mr. **Long**. No. I would say, originally, there was a feeling that a number of large cities were underfunded. In fact, that is not necessarily a national pattern. I would suggest the evolving rationale for Title I has been the recognition of the greater needs to provide intensive educational services for children who have the double burdens of poverty and low achievement and are concentrated in areas where their peers have similar handicaps. I know of no urban or rural educator who would argue with those premises, that a child facing those burdens doesn't need extra funds.

Mr. **Miller**. So you have these funds made available based upon that. Now, you have seen states start to attempt to equalize under court order or under political pressure or what have you. California has done that and they claim very shortly 82 percent of the districts will be less than a hundred dollars disparity. Now, you want to come back through and because you make a determination of low performance or disadvantaged is not always a factor. That will address special problems. You want to lay what California would call a separate and third layer on some of those school systems. I don't see how that is within the goals of Title I. In fact, what it really allows is a degree of greater specialty in targeting after you address the economic inequities in this system, which, in fact, may not be entirely related to the educational policy of the system.

Mr. **Long**. Well, I agree in general——

Mr. **Miller**. I live in a wealthy district. I suggest we could use a lot of help because we have a lot of educationally disadvantaged students, but probably not many Title I.

Mr. **Long**. Certainly both programs like EDY and Title I recognize even wealthy districts. For example, San Francisco, which is high in assessed valuation per pupil, has serious educational problems and require additional funds.

The difficulty of coupling school finance reform, evolving out of a case like Serrano, is they are only addressing one inequity. That addresses soley the inequity of having the amount of wealth per pupil determine your expenditures. They don't deal with the more difficult questions of pupil needs.

Mr. **Miller**. Okay. But you have raised the base, you have eliminated one level of discrimination, one that has caused a great deal of problem, and also caused the original problems back in the sixties, when you look at some of the big city school districts that had their assessed valuation drop out from underneath them, and had an influx of poor people into the city.

You have attempted to eliminate that inequity. Now along comes Title I, which also addresses that inequity, and gives you some help, but also addresses the question of student performance.

Finally, the fine tuning, it seems to me, is that third layer, that helps to level out the valleys and the hills, is the state coming in and targeting based upon educationally disadvantaged for performance in school districts.

It says you need to reduce class size, have special reading, special math programs, in this district here you don't need it, here you do. That is even a greater fine tuning of the system.

Mr. LONG. I agree with all those. But I am not sure any of those necessarily—in accomplishing those objectives, necessarily have any conflict with Title I. I don't think they do.

Mr. MILLER. The differences would be that your third layer would be Title I and my third layer would be state funds. As I see it, yours is a more gross eligibility requirement, which is economically disadvantaged.

Mr. LONG. If we are referring only at this point to the district allocation—but my suggestion was that it would seem to me that California by modifying its own distribution formula could accomplish all or more of its objectives without violating the Title I requirements.

It seems to me you can develop programs to coordinate with Title I in such a way that you would not penalize the districts because of receipt of the Title I funds, which as I understand it is the only issue in California.

Mr. MILLER. But the receipt of Title I funds may not guarantee performance on the part of students. So then the state has the ability to come back in and target, it seems to me, to say, look, in spite of Title I, in spite of state equalization, students in this school district, there appears to be a number of elements in the school where students are simply not performing and they need additional aid. I don't see that anybody is getting penalized.

Mr. LONG. I wouldn't see that as a conflict because I would think in that case——

Mr. MILLER. You lay Title I over the top, Title I is based upon economics.

Mr. SILVERSTEIN. Then penalization in that case is in your assumption, I think, is that there are no other Title I eligible children who are not receiving assistance.

Mr. MILLER. My assumption is good faith. That is where my model starts to come apart, probably. It is because what Mr. Long says is his fear that you get a whole series of categorical programs that don't operate in good faith.

Mr. SILVERSTEIN. The question in many cases may be should the school district have the option of meeting the needs, unment needs of children in non-Title I areas, or should they meet the needs of educationally deprived children in low income areas, given that there is limited resources and there are those two groups of categories.

What Title I says is that you cannot penalize the kids in the core areas.

Mr. MILLER. I understand that. But with a limited amount of money, and with the blind criteria, if you will, of ranking—the California system uses EDY, and you apparently approve of it.

It seems to me one state can come along and say, all right, this is what we are going to contribute on a general aid to education from the states, property taxes, what have you—that is it, give us our Title I money, we are done.

Or another state can come along and say after we do all that we want to go back and assess the educational achievements of these children, and we are prepared to make the contribution out of general revenues, over and above what that equalization formula is that has been mandated by the court, or what have you.

Mr. LONG. In fact, California could create, by statute or regulation, its formula which didn't use a ranking, but distributed funds on the basis of achievement tests, or some other tests. They could resolve the issue.

Mr. MILLER. There are a lot of ways to do it that would be unacceptable.

Mr. LONG. That would be acceptable under Title I because all Title I requires for an exemption from comparability is the program be similar to Title I, not identical. So that it could use another measurement of educationally disadvantage.

It wouldn't have to use the same as Title I. It could distribute purely according to criteria of educational need, disregarding any economic circumstances, so that it could directly deal with what it wants to deal with.

The basic problem is it uses identical criteria to Title I, and so it comes into conflict because when you overlay both schemes, you should be giving the funds to the same children. That can be avoided by a simple amendment to the California law. That is really my only point.

I am suggesting rather than asking the Federal Government to amend Title I, with untoward consequences in other states—I tried to suggest some of the problems, I am sure I cannot conjure up all of them. It seems to me that California could accomplish the same objectives by amending its own law.

Mr. MILLER. I am miffed, to say the least, at how you do go about amending this so you don't get people running in with all kinds of schemes to change money for less than legitimate reasons.

Mr. LONG. At the district level, I think you would run into serious problems in southern states, where you have lots of rural districts which receive on a per pupil district probably the most money of any districts in the nation, and yet these are districts which recent studies that the Lawyer's Committee are doing, which we call our southern underfunding studies, have shown these districts make almost no local effort.

Their state and local expenditures are the lowest in the state. One of the reasons for that—although you cannot prove intent here, I suspect—is that they are getting lots and lots of Title I. So, you already see some of that incentive in the rural south. I am afraid this kind of exemption might increase loopholes for increasing that.

Mr. **Whiteneck**. A comment, please.

I get concerned if it is just so easy to change California law and make it all happen.

An example. If a school district identifies an unduplicated count let's say of limited and non-English speaking students, economically deprived students, and educationally disadvantaged students, and they come up with a count of 10,000 in that district, an unduplicated count, K-12 system; and that district feels that it needs $400 per child to meet those educational needs, the needs of those children, and they should receive $4 million of some funds for supplemental service for those children.

Our contention is that if we had a state formula that said, all right, you deserve $4 million, and out of the state funds you are high enough ranking in all those categories that you receive $3 million. Title I comes along and has its economic criteria, and its formula, gives that district $2 million.

When you combine it, they have $5 million to meet $4 million worth of needs. What we are saying is that there is an option there. We can go through a hearing process and reallocate what we think is $1 million of federal money going to that district that should not go there.

As we understand the federal law, and the regulations, we have that prerogative. It takes a hearing to the commissioner's level, and you can reallocate Title I dollars.

What we are saying is that if the Federal Government is giving that district $2 million of the $4 million it needs to meet the K-12 supplemental needs of those disadvantaged children, then the state should come along and give them another $2 million, so that they have $4 million to meet their $4 million identified need. They don't need $5 million to meet a $4 million need.

We would take that extra bill, go to the next district, and on down the line, so that all the districts get their unmet needs filled. That is the proposal we have from the state level to the local level allocation.

Any formula that you try to devise in California that doesn't recognize how much federal money you are getting, in order to carry out the concept I have just described, you would have to go through some kind of reallocation process of the federal dollars.

Otherwise, you are going to have, we think, in 1979-1980 more money available than there is need in some districts.

Mr. **Miller**. One final question.

Mr. Long, there is no way—or is there a way—that would be more positive—after talking to you I get the feeling there is no way—that you, in a maintenance of effort, that you don't allow—I mean if the state wants to come up with a new categorical program, that you make sure it is very clear that it is all new monies, based upon effort, not just in gross dollars amount what they contributed last year to education, but whatever was produced.

Is there a way to do that?

Mr. **Long**. You can do it. But the problem is there is hardly any new money in a period of inflation, because there is a normal extra increment which the state always puts—usually puts into the state eductaion funds, and all you have to do is relabel the increment.

I suppose you could put in an inflation factor. But short of putting in an inflation factor, there is no way of preventing relabeling because the last year's dollar is just updated for value.

Mr. **Miller**. Chris?

Mr. **Cross**. One thing I wanted to follow up with Mr. Silverstein and Mr. Long. In your statement in several places you indicate that you feel that the regulations could be changed and the law is not a problem.

My concern there is that your statement treats the issue too gently because the lawyers in the general counsel's office of HEW may have different views than you do on issues, and in fact may see things in an entirely different context.

So, I am not easy with the sort of waving away of those issues in just that way. I don't know if there is anything you want to comment on or not. But I do think that may overlook some of the deep conflicts that may exist within the Executive Branch.

Mr. **Silverstein**. In that context, some of the recommendations, especially in the state compensatory education area that we make, in terms of amending the regulations, can certainly be made by statutory amendment.

I am referring specifically to problems in terms of parent involvement, private schools, school attendance area eligibility—we do make recommendations for regulatory changes based on our analysis.

But certainly it could be made in the statute.

Mr. **Cross**. I would appreciate seeing, and I think Mr. Jennings would as well, what those changes might be in the statute.

Mr. **Silverstein**. I think you already have a copy of our book.

Mr. **Cross**. Doesn't that deal with changes in regulations? Do you have statutory changes in there?

Mr. **Silverstein**. Yes. This book I am referring to has everything.

Mr. **Cross**. I haven't been able to read my way through the 3,000 pages.

Mr. **Silverstein**. This one only has 300.

Mr. **Cross**. That is one of about five volumes.

Mr. Whiteneck, something that wasn't touched on in your statement today, which you and I talked about earlier, is the problem of the audit trace, trying to trace the Title I dollars down particularly in the schools where EDY is in effect. I wonder if you could comment on that.

Mr. **Whiteneck**. Okay. Our concern is the fact that our experience indicates that you need a roster or list of Title I students at the classrooms and at the school site level. Our contention is that the school should be considered eligible, and once that school is eligible, then the children at that school should receive the services and we should trace the dollar and identify the supplemental services to the school, not necessarily to the classrooms or an individual group of children.

We recognize the problem with how many or what should the concentration level be. We are presently working on some suggestions of whether the break point, if a school has 75 percent of the children economically and educationally disadvantaged, and/or limited, non-English speaking, should that school be considered a totally impacted school, and all children eligible for supplemental services.

Whether that should be 75 percent, 80 percent, 65, we are still debating.

Our present thinking is that you probably need a minimum of three levels—that you need a level that gives you total impaction. You need then a buffer, so to speak, where you probably shouldn't consider the total impaction, but you need to be specific about the services going to certain groups of children within that school.

Then we feel definitely, particularly at the secondary level, you are going to need to identify specific services, and accounting, and when you say accounting, I mean fiscal accounting as well as program accounting, of those services directly to certain students because you are going to find in many districts that as this funding increases, where Title I funds and state compensatory education funds going into junior and senior high schools, the percentage of concentration in those schools of students in need isn't that great.

As you have more funds available, you are going to give to those schools with lesser concentrations. And we feel and we will support identifying accounting services and funds directly to students.

So, we are kind of separating our recommendations into three tiers, and separating the elementary programs from the secondary or the so-called self-contained program versus an individual period time program that a child moves through.

We hope to have most of that work done, as I indicated at the end of my testimony—recommendations on specific language—within the month, and on this other issue that you just raised, probably take us another month or two to finally resolve that.

Mr. SILVERSTEIN. If I can respond to that question also, again I think there are different categories of schools. I know, Mr. Miller, you asked this question to other witnesses.

In a situation where if 75 or 80 percent of the children in a particular Title I school are educationally deprived, does it make any sense at all to focus or try to have an audit for individual children.

We have suggested a recommendation in that regard, and that is that there should be some demonstration models, like I guess Section 150 or 151 of the present system, and provide for those schools to allow them to target the entire school.

We set out five very specific conditions under which we think that exemption should be granted. That appears in another book that we have written—it is an orange cover. Again, I could go over the specific conditions right now, or we can again give you the page number for the record, whichever.

But would you like me to go over the conditions now, or should we just submit that for the record?

Mr. MILLER. Why don't you submit it?

Mr. SILVERSTEIN. Fine.

[The information referred to follows:]

SCHOOLS WITH SUBSTANTIAL CONCENTRATIONS OF CHILDREN WHO ARE EDUCATIONALLY DEPRIVED*

It appears that in some urban school districts and rural districts which are extremely poor, there are Title I schools in which 80 percent or more of the children enrolled are educationally deprived. Several SEAs and local school officials argued that it makes little sense to concentrate efforts on the design of "special" programs for 80 percent of the school population. In this situation, it is difficult if not impossible to design a program for educationally deprived children which does not also meet the needs of the school.

We recommend that the Title I statute be amended along the lines of Section 150 (permitting demonstration projects) to permit NIE or OE to study the effects of allowing Title I funds to change the entire school program under certain conditions. We would support such a study because we feel that any school with such a high concentration of children who are educationally deprived will have an extremely difficult time (a) demonstrating compliance with the general aid prohibition and the intra-school supplanting provisions and, (b) administering or over-seeing the legal operation of a program in such a school.

In this case, the question of compliance would appear to be outweighed by the practical realities of the situation, i.e., targeting 80 percent of the school population.

We recommend that the Title I statute be amended to permit an LEA to target all of the children in the school or selected grade levels where (a) at least 80 percent of a school body or at least 80 percent of the children in the grade levels that are targeted in that school have been shown to be educationally deprived by objective methods and utilizing the district-wide cut-off for participation in Title I and (b) each educationally deprived child in the school receives Title I funds in an amount consistent with the concentration requirement. For example, assume that there are 1000 children in school A; 80 percent or 800 children are considered educationally deprived. The states interprets the concentration provision as requiring that $300 of Title I funds be expended per participant. Thus, the school interested in qualifying for the exemption must receive, at a minimum, $240,000 in Title I funds (800 x $300).

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* The following discussion appears on pages 719-725 in a paper prepared by the Legal Standards Project entitled, An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of ESEA.

In addition, the statute should require that the LEA pay for a proportional cost of the program with state or local general funds, i.e., the LEA would pay for 20 percent of the cost of the "Title I" program in a school where 80 percent of the children are educationally deprived.

We also recommend that the statute and regulations be amended to include the following conditions:

- With respect to the use of Title I funds, the LEA must still comply with all federal requirements, with the following exceptions: (1) the intra-school supplanting provisions, (2) the intra-school general and prohibitions, and (3) the within school targeting of children provisions.
- The LEA, using supplementary state or local funds must pay its fair share of the program (e.g., if 80 percent of children are educationally deprived, the LEA's contribution is 20 percent). To simply replace other state and local funds that would have been provided but for the existence of this special program, all of the requirements protecting the supplementary nature of Title I funds apply with the following exceptions: (1) the intra-school supplanting provisions (see *supra.*) (2) the intra-school general aid prohibitions, (3) and the within school targeting of children provisions.
- The LEA may not use state or local compensatory education funds similar to Title I or any other special program otherwise exempt from the base under the excess costs provisions to pay for the 20 percent contribution to the special program.

- The state and local payments made under this plan must be excluded from the comparability computations.

Once it is agreed that the basic recommendation is reasonable, the conditions under which this policy should be allowed to operate must be examined.

The first recommendation set forth above is that the LEA must fund the program for all children enrolled in the school. For example, where 80 percent of the children are educationally deprived, 80 percent of the program should be funded with Title I and 20 percent with state and local funds (20 percent of the children are not considered educationally deprived).

Under the existing legal framework, Title I funds would be used to fund programs only for the 80 percent educationally deprived population. In other words, we conclude that Title I funds should only be used to fund programs for educationally deprived children, even in the situation where the total program would serve all children in a school. State and local funds should pay for the participation of non-educationally deprived children.

In accordance with the concentration requirements, i.e., the design of programs must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the needs of educationally deprived children, we conclude it is unreasonable to assume that allowing an additional 20 percent of the students to participate that it will not dilute the effectiveness of the program.

Furthermore, we conclude that it would be unreasonable to allow the limited appropriations available under Title I to be used for non-educationally deprived children, since to do so would prevent other eligible children in the school district from participating.

In sum, Title I should only pay for the excess costs of a program, e.g., 80 percent, although in this case the dollars need not be traced down to the child level since the program would involve changing the entire school environment.

In this chapter and in the preceding chapters, we analyzed the federal requirements which ensure that Title I funds will be used as categorical aid for meeting the special educational needs of educationally deprived children and not to replace or make up for past and present discrimination by the LEA in the provision of state and local funds or to meet the needs of the school district, however pressing.

The first and second conditions ensure that Title I as well as the local's special contribution supplements the level of state and local funds which would have been provided but for the existence of this special "Title I" program.

Thus, the requirements set forth in the federal legal framework generally apply with respect to the special program in schools with enrollments of educationally deprived children in excess of 80 percent of the total student population. However, there are several notable exceptions.

Since the entire school population may participate, the LEA must be exempted from the targeting of children requirement which ensures that only those educationally deprived children who are in greatest need of assistance receive the benefits. In this case, the LEA is not required to "trace Title I dollars" to the targeted children, since all children are program participants.

Furthermore, the intra-school supplanting and intra-school general aid prohibitions are inapplicable. In other words, the LEA need not demonstrate the educationally deprived children within the project school have not been penalized in the distribution of state and local funds by comparing the level of state and local support provided to non-educationally deprived children attending that school. The program, using Title I and special state funds, will be designed to generally aid that school.

The above policy should not be construed as to permit LEA discrimination against the special project school in the provision of state and local funds. Therefore the inter-school supplanting provisions, as well as the ordinarily provided, excess costs, and comparability provisions still apply.

Furthermore, neither the Title I funds nor the special local contribution may be used to generally aid the school district. Thus, it would still be illegal to pay for an instructional T.V. system serving the entire district, although such a system could be provided for the entire school (so long as it is not ordinarily provided in non-project areas with state and local funds).

The third condition set forth above explains that in a state which has a state or local compensatory education program similar to Title I, such funds may not be used to pay for the local's 20 percent share. The rationale for this condition is straightforward. For a program to be similar to

Title I, the participating children must be educationally deprived, as defined in the Title I regulations.* Since the children constituting the 20 percent are not educationally deprived, by definition state and local compensatory education programs similar to Title I can not be used.

Finally, with respect to comparability, just like Title I funds, the special state or local 20 percent contribution must be excluded for purposes of computing comparability. Recall that Title I funds are excluded from the comparability computation because the fundamental purpose of the provision is to ensure that Title I services are supplementary. Similarly, the state or local share must be excluded because it supplements the services generally provided with state and local funds.

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* See §116a.26(j)(5)(i), 40 F.R. 11486 (March 11, 1975) as proposed by OE.

Mr. **Silverstein.** In terms of the other situation, in terms of—Title I is a program for educationally deprived children. It is not a program for schools. If children attend public school, or private school, they are still eligible.

So, it is a program for children, and the declaration of policy says to expand and improve for educationally deprived children.

What we are very concerned about is that antidiscrimination provisions go down to the child level except for that situation where it is impractical, where there are 80 percent.

Let me give you an example of the kind of discrimination that can occur. It is happening now. You can take the Title I children, put them in a separate class, a separate school, provide all of their programs with Title I funds, and not give them a cent of state and local funds.

That is not expanding and improving. You are not expanding and improving those children's education. You are replacing it. And you are saving the local taxpayer's money.

Mr. **Cross.** Thank you.

I wonder, Mr. Whiteneck, if you could also tell us the status of the situation with respect to OE and parent councils. I believe OE held up your federal allocation, did they not, for a while on that issue, as well as the Richmond issue?

Mr. **Whiteneck.** The last day of September, September 29, we received a grant award letter from USOE, with no conditions. We have been advised verbally that they will be making some program recommendations about that.

But, we have not received anything in writing. So, our grant award for 1977-78, grant award letter, was received with no conditions attached at this time.

Mr. **Cross.** But there has been a dispute, hasn't there, about the composition of those councils.

Mr. **Whiteneck.** There was a dispute on the composition of the councils regarding the residence requirement for people to be members of the council. The dispute was over the fact that if you had teachers or other school personnel on the council, that they had to reside in the attendance area served by the school.

In many of the larger areas, the attendance areas of some of our schools are only eight or ten square blocks. If every member of that council had to reside in that area, we felt that that was inappropriate.

Mr. **Cross.** One of the recommendations made the other day by the Title I national advisory council was that the law be changed so that parents whose children are eligible could be on the council, not just those who are served.

Mr. **Silverstein.** Can I suggest that you have already amended the statute to do just that, in technical amendments of 1976.

Mr. **Cross.** In Title I?

Yes, that is right. Thank you.

Mr. **Miller.** Just to interrupt, do you have any problem with teachers who live outside the attendance areas serving?

Mr. **Silverstein.** I personally do not.

Mr. **Whiteneck.** We feel they should be working at that school, not represented on some other council.

Mr. **Greer**. We have no problem.

Mr. **Cross**. Mr. Greer, you have avoided having any questions directed to you.

Mr. **Greer**. I have tried to stay out of this battle.

Mr. **Cross**. There are a couple of questions I would like to ask you. First, have you had any problems with OE on your state program?

Mr. **Greer**. None whatever. We have tried to stay in close contact, not come up with a state statute that violated the federal statutes.

Mr. **Cross**. I noticed that in your statement you cite the Ohio law.

Mr. **Greer**. Right.

Mr. **Cross**. And it doesn't say anything about Title I. But yet you claim that you allocate the funds based on the Title I system. Is that a matter of regulation?

Mr. **Greer**. Yes, it is a matter of regulation, that the compensatory state funds may be used only in Title I eligible buildings. That is part of the standards.

Mr. **Cross**. Did the state ever consider doing it a different way?

Mr. **Greer**. Well, what they added was a second category of disadvantaged pupil impact aid, general.

Mr. **Cross**. The second program that you described.

Mr. **Greer**. Right.

Mr. **Cross**. Have you examined the relationship between AFDC children and educationally disadvantaged children?

Mr. **Greer**. By examination, what do you mean?

Mr. **Cross**. What is the correlation?

Mr. **Greer**. Yes, we have I am sorry I don't have Jim Miller's report on that. He will probably be up here testifying later.

There has been an examination which covered a period of three years.

Mr. **Cross**. I think that would be helpful, if you could submit that for the record in today's hearing. I think that is very relevant.

[The information requested not submitted in time for publication.]

Mr. **Cross**. Mr. Silverstein, you suggested an 80 percent cut-off point at which you would treat the school in a different fashion. Since we saw data from Detroit the other day and you are probably familiar with the Decima data which has been talked about in the hearings a great deal we have discovered that the relationship between economic and educational data may be quite different.

Detroit, for instance, shows a school with 32 percent low income, but only 9 percent below grade level. If in fact you did that, and allowed the school to be served totally above 80 percent, wouldn't you run the risk then of serving a lot of students in some schools who didn't have many educational needs, while needy students in non-Title I target schools would not be getting any service at all?

Mr. **Silverstein**. I lost you at the end. I think a couple of times you used the word 'educational' instead of 'low income.' Could you try that again?

Mr. **Cross**. Let met go back and ask you, in your statement you talk about 80 percent of the students in a school. How do you define 80 percent?

Mr. **Silverstein**. 80 percent of the children who are educationally deprived reside in Title I areas.

Mr. **Cross**. Then you would make it on that basis and not on the basis of low income?

Mr. **Silverstein**. Title I areas. So it would be 80 percent of the children residing in low income areas. Any school that has 80 percent educationally deprived, and that school is a Title I school.

Mr. **Cross**. All right. So then regardless of how many were economically deprived in that school, if 80 percent were educationally deprived.

Mr. **Silverstein**. That is correct.

Mr. **Cross**. Fine. Meets my concern.

One final question. You know Title I has essentially what is called the "mini-comparability" report on the handicapped. With the enactment of PL 94-142. Do you think that is still required?

Mr. **Silverstein**. At this point in time I really cannot give an answer. We did not have the time to study programs other than state compensatory education, with the exception of ECE, because we thought that was very important.

I have just heard a lot of people say that it is not very helpful, it is not necessary. I have heard other people say with respect to bilingual it is. I just would really prefer not to comment because we did not study it, and I don't think my answer would be helpful.

Mr. **Cross**. I wonder if any of the other gentlemen would want to comment?

Mr. **Greer**. Not at this time.

Mr. **Whiteneck**. Not at this time.

Mr. **Cross**. Thank you.

Mr. **Jennings**. I have one last question for Mr. Whiteneck, and then two questions for the record, if you don't mind.

Mr. Whiteneck, I just want to make sure I understand your position clearly. You are recommending that whenever resources available to a school district from the state and Federal Government are adequate to meet the proposed needs of educationally deprived children, that a state be allowed to reallocate either the federal or state money to the school districts.

Now, are you talking about the educational needs of educationally deprived children in low income areas, so that it would be similar to the proposal of the Lawyers' Committee?

In other words, are you saying that when the resources available from the federal and state government are enough to equal the full entitlement of what a school district would receive for all its Title I children, that the state should have the right to reallocate any excess funds, whether from the federal or state government, to other districts?

Mr. **Whiteneck**. We are recommending even going beyond just the Title I areas. In other words, within our areas it would be Title I. So, Title I areas would be fully served and we feel that some of the limited and non-English speaking students are concentrated in some cases, some rare cases, outside Title I areas.

We have some educationally disadvantaged youth concentrated outside Title I areas. But those rare instances would be in addition to the Title I areas.

Mr. JENNINGS. So you are actually proposing a higher standard than the Lawyers' Committee?

Mr. WHITENECK. That is correct.

Mr. JENNINGS. If I could ask Mr. Silverstein and Mr. Long a few questions, I realize your contract runs out this afternoon, but maybe you can write fast.

One has to do with the various requirements affecting various school districts, the comparability requirement, the supplement-non-supplant requirement, the excess cost, requirement, are all impacting in a different way on what a school district has to do in order to qualify for Title I. You make the statement each one is an anti-discrimination requirement needed to assure that the Title I child receives adequate Title I services from state and local money.

Would you supply for the record a memorandum on each of those requirements giving an example of how they differ? For instance, I am a little bit confused. I think there is a little bit of overlap between the equitably provided and the supplant provision.

[Information requested follows:]

THE DISTINCT TYPES OF DISCRIMINATION PROHIBITED BY THE FUNDS ALLOCATION PROVISIONS

To ensure that Title I funds are used to "expand and improve" [1] the educational programs of educationally deprived children residing in low-income areas and to meet their "special" [2] as opposed to regular or ordinary needs, the Title I statute and regulations have historically (a) prohibited certain types of discrimination with respect to the distribution of state and local funds and (b) required the provision of a certain minimum level of state and local support. Specifically, the Title I statute and current regulations contain the following provisions:

State Aid: The state is prohibited from distributing state aid in any way which takes an LEA's Title I allocation into consideration and then penalizes the LEA in the distribution of state funds. [3]

Maintenance of Effort: Local school districts are required to maintain their fiscal effort so that they do not shift to the federal government their ongoing financial responsibilities for their educational programs. [4]

Comparability: Services provided with state and local funds (measured in terms of pupil to teacher and expenditure per pupil for instructional salaries ratios) to project area schools, i.e., schools receiving assistance under Title I, are approximately equal to services provided to non-project area schools. [5]

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[1] Section 101 of Title I (20 U.S.C. 241a).

[2] Id.

[3] Section 143(c)(1) of Title I. (20 U.S.C. 241g(c)(1)); 45 C.F.R. §116.44(1975); now at 45 C.F.R. §116.18(1976).

[4] Section 143(c)(2) of Title I (20 U.S.C. 241g(c)(2)); 45 C.F.R. §116.45(1975), now at 45 C.F.R. §116.19(1976).

[5] Section 141(a)(3)(C) (20 U.S.C. 241e(a)(3)(C); 45 C.F.R. §116.26(1975), now at 45 C.F.R. §116a.26(1976).

Equitably Provided: Services must be equitably provided to educationally deprived *children* according to objective criteria. 6/

Supplement, Not Supplant: Title I funds must be used to supplement, not supplant the level of state and local funds which, in the absence of Title I funds, would have been provided to *children* participating in Title I programs. 7/

Excess Costs: Title I funds will only pay for the excess costs of programs and projects. 8/

General Aid: Title I funds must be used to meet the needs of educationally deprived children and not for meeting the needs of the school or the school district, however pressing those needs may be. 9/

Each provision is included to guard against a *distinct* type of discrimination in the provision of state and *local* funds. The following examples illustrate the function which each requirement performs.

Assume that in State A the state school aid formula reduces an LEA's state education aid by the amount of Title I funds received, i.e., a school district receiving twenty million dollars in Title I funds will receive twenty million dollars less state aid than it would otherwise have received. In this situation the school district is penalized by receiving less state aid than it would have received but for the existence of Title I. Title I funds in this example, simply replace state funds resulting in no net increase in funds available to meet the special educational needs of educationally deprived children. The Title I legal framework includes a provision designed to prohibit this type of penalization. 10/

6/ 45 C.F.R. §116.17(h)(3)(1975). Under the revised regulations, the "ordinarily provided" provision has been replaced by the "equitably provided" provision. 45 C.F.R. §116a.22(b)(10)(1976).

7/ Section 141(a)(3)(B) of Title I (20 U.S.C. 241e(a)(3)(B)); 45 C.F.R. §116.17(h)(1) and (2)(1975); now at 45 C.F.R. §116.40(1976).

8/ Section 141(a)(1) of Title I (20 U.S.C. 241e(a)(1)); Program Guide No. 44, Section 4.1, now at 45 C.F.R. §116.40(a)(2)(iii)(1976).

9/ Section 101 of Title I (20 U.S.C. 241a); 45 C.F.R. §116.17(g)(1975), now at 45 C.F.R. §116a.22(b)(4)(iii), (b)(6), (b)(7) and (b)(8)(1976).

10/ See *supra*, note 3.

Assume now that School District 1 reduces its local tax revenues by the amount of its Title I allocation, i.e., the LEA uses Title I funds to replace its local fiscal effort. The net effect is the same as in the example above, with Title I funds simply replacing local funds in Title I schools. The Title I maintenance of effort requirement is designed to ensure that federal assistance serves a supplemental rather than a basic education function, and that Title I grantees not shift to the federal government ongoing financial responsibility for basic education programs. 11/

Assume that School District 1, in response to pressure from parents residing in more affluent areas in the district (or because the district does not have an objective system for distributing state and local funds to schools within the district), provides a lower pupil to instructional staff ratio and greater expenditures per pupil for instructional salaries in schools not receiving assistance under Title I than in Title I schools. Assume, further, that the schools in the non-Title I areas provide kindergarten to the children of appropriate age paid for with state and local funds; whereas, the kindergarten age children in Title I areas receive the same instruction paid for with Title I funds.

The Title I comparability provisions are designed to ensure that Title I funds provide services in Title I areas that are over and above the level provided from local and state funds in non-Title I areas. As Congressman Quie explained on the House floor (Volume 116, Part 8, 91st Congress, 2nd Session at p. 10013):

> ...the whole purpose of Title I is to concentrate and increase efforts on behalf of disadvantaged children because these children need more help than their more fortunate peers. Unless comparable services are provided before the application of Title I funds in schools serving concentrations of poor children, this purpose is defeated.

Thus, the first type of discrimination described above is prohibited by the comparability provisions. 12/ The LEA must provide in each Title I area services comparable to those in non-Title I areas. Comparability is determined by specific ratios (pupil to instructional staff ratio and expenditures per pupil for instructional salaries).

11/ See *supra*, note 4.

12/ See *supra*, note 5.

However, in the example above, the comparability regulations do not prohibit School District 1 from discriminating against Title I schools in the provision of kindergarten; 13/ however, this type of penalization was prohibited by the "ordinarily provided" provision and continues to be prohibited by the new "equitably provided" requirement. 14 /

If, for example, there are ten (10) Title I schools and ten (10) non-Title I schools in the school district, each school has 50 children of kindergarten age and the LEA only has sufficient state and local funds to support a kindergarten program in ten of the twenty schools, the ordinarily provided provision is designed to ensure that the Title I eligible children will receive their fair share of state and local funds for kindergarten programs. In this district a proportional distribution of state and local funds would require that five (5) Title I schools receive state and local funds for kindergarten and five (5) non-Title I schools receive such support. 15/ The LEA's Title I funds may then be used to provide kindergarten in the remaining five Title I schools. In this way Title I children, taken as a whole, receive supplementary kindergarten services.

13/ Comparability is generally measured in terms of two ratios; (1) pupil to staff and (2) expenditures per pupil for instructional salaries. The existence of a kindergarten program which adds both pupils and teachers will not show up for purposes of computing comparability. For example, if school A has 8 instructional staff members and 200 children, without kindergarten, its pupil to staff ratio is 25 to 1. If 50 full-day kindergarten children and 2 kindergarten teachers are added to the school its pupil to staff ratio is still 25 to 1 (250 children ÷ 10 teachers).

14/ See supra, note 6. The revised regulations which were published in the Federal Register on September 28, 1976 replaced the "ordinarily provided" provision with a requirement for the "equitable provision" of state and locally funded services. (§116a.22(b)(10), 41 FR 42919). Even before the issuance of the revised regulations OE interpreted "ordinarily provided" consistently with the concept of the "equitably provided" requirement.

15/ If the schools had unequal enrollments, the proportional distribution would have to be determined by the number of kindergarten children in areas eligible and ineligible for Title I services.

Now assume that a Title I school decides to use Title I funds to provide children in the Title I program with their regular academic instruction for the entire school day. The Title I program is identical to the regular program. The class size for Title I children is identical to the class size for children not participating in the program. In sum, children in the Title I program receive no assistance from state and local sources for their education, in contrast to children not participating in the Title I program whose instruction is paid for from state and local funds, e.g., $1,000 per child.

The comparability and equitably provided requirements do not prohibit the type of penalization described above, i.e., discrimination which is occurring within the project area school; they only compare services in Title I areas with services in non-Title I areas. It is necessary to look to another requirement, that Title I funds supplement and not supplant state and local funds. The supplement, not supplant requirement, 16/ which governs this situation, specifies that Title I funds must not replace the level of funds which would have been made available to children in Title I programs but for the existence of Title I i.e., children in Title I programs must receive the level of state and local funds they would have received if Title I did not exist.

If Title I did not exist, the children in the Title I program would have received the same level of state and local funds as other children in the school. Thus, the use of Title I funds to provide the regular academic program described above is prohibited by the supplement, not supplant, provision.

The excess costs provision added by Congress in 1974, 17/ which provides that Title I funds may only be used to pay for the excess costs of programs, also governs the above situation. If the state and local expenditure in the district is $1,000.00 per pupil for the regular academic program, Title I may only pay for the costs of the program which are in excess of $1,000.00 per pupil. 18/

16/ See supra, note 7.

17/ P.L. 93-380. See supra, note 8.

18/ In other situations excess costs requirement is useful for determining the amounts which Title I can pay for particular services or other program components, i.e., the excess cost of a particular supplemental service.

The supplement, not supplant and excess costs provisions are closely related. Supplement, not supplant prevents LEAs from discriminating against children in Title I programs in the apportionment of state and local funds, because of the existence of Title I. The excess cost provision reinforces the above standard by governing the level of state and local funds an LEA must commit to the education of children in a Title I program before Title I funds can be used to pay for supplementary components.

In addition to the anti-discrimination provisions described above, the Title I legal framework includes the general aid prohibition, a fundamental requirement designed to ensure the categorical nature of the Title I program. To delete the prohibition against using Title I funds for general aid purposes would have the effect of recasting Title I into a general school aid or property tax relief program and would, in all probability, reduce the total number of educationally deprived children receiving benefits under Title I.

In sum, the provisions of Title I which (a) prohibit a state from penalizing an LEA because of the receipt of Title I funds; (b) require LEAs to maintain prior fiscal effort; (c) require comparability among Title I and non-Title I schools; (d) require that an LEA equitably provide state and local services before using Title I to pay for additional amounts of the service; (e) require Title I funds to supplement and not supplant state and local funds; and (f) require Title I funds to pay for only the excess costs of programs and projects address distinct, but interrelated, forms of discrimination in the allocation of state and local funds to children in Title I programs and schools. Each provision is essential to prevent the form of discrimination it addresses, as described in the examples above. Each is designed to ensure that the "special educational needs of educationally deprived children" are served. If any of these provisions were deleted, Title I could be transformed into general school aid or property tax relief.

Mr. SILVERSTEIN. This is covered in the yellow book, "Introductory Analysis Concerning the Basis and Clarity Restrictiveness of Title I Requirements."

Mr. JENNINGS. Are there examples in there? I read all your material and I don't remember that.

Mr. SILVERSTEIN. It is in the yellow book right at the beginning. I would be glad to submit, also for the record, we have just finished a comprehensive manual describing all the Title I requirements and all the OE interpretations, references to old guidelines and handbooks.

That went to the printer yesterday and that I will also submit for the record. It expands on the general memo describing the distinctions.

Mr. JENNINGS. With Mr. Miller's permission, if I might ask for a second memorandum regarding comparability.

There have been a number of suggestions made dealing with comparability requirements; one being school districts should not be held to the comparability provision during every day of the school year. In other words, on any day of the school year the auditors can come in and say, "You are out of compliance," but rather, there ought to be particular points of time during the school year when school districts must be comparable.

The second suggestion has been that instead of the complete cutoff of funds which is applicable now, even if a school district is out of compliance in only one school to the extent of a couple thousand dollars, the entire school district's allocation has to be repaid to the federal government. There is a suggestion of some sort of graduated or proportionate penalty.

The last suggestion has been that the Office of Education has interpreted the comparability requirement as saying each Title I school has to have services comparable to the aggregate in the non-Title I area. The suggestion has been made that possibly the requirement should be the aggregate of services in the entire Title I area which should be equal to the aggregate of services in the non-Title I area. It would be interesting to hear your response.

[Information requested follows:]

Issues Concerning the Operation of the Comparability Provision

Introduction

This memorandum addresses three issues raised by Jack Jennings, Counsel for the House Subcommittee on Elementary, Secondary, and Vocational Education concerning the operation of the Title I Comparability Provision contained in Section 141(a)(3)(C) of the statute (20 U.S.C. 241e(a)(3)(C)). The first issue concerns the appropriateness of the existing standard of comparison for demonstrating comparability. Presently, OE regulations require that an LEA demonstrate that the services provided to each Title I school be comparable to the non-Title I average. The question raised is whether the standard should be modified to require a comparison of the Title I average with the non-Title I average.

The second issue raised concerns the requirement that LEAs maintain comparability. Presently, LEAs must report comparability using data collected on a date certain. In addition LEAs must submit an assurance that comparability will be maintained throughout the school year. The question raised is whether the maintenance of comparability provision should be retained? deleted? or modified?

The final issue concerns the enforcement sanctions available for use against LEAs which fail to demonstrate comparability by a date certain. Presently, an LEA which fails to demonstrate comparability loses its total allocation. The question raised is whether OE should adopt a graduated withholding schedule.

ISSUE NO. 1 STANDARDS OF COMPARISON FOR DEMONSTRATING COMPARABILITY

Issue Presented

The office of education has interpreted the comparability requirements as saying each Title I school must have services comparable to the aggregate in the non-Title I area. The suggestion has been made that the requirement should be the aggregate of services in the entire Title I area compared to services in the non-Title I area. Should the comparability provision be modified to require that an LEA demonstrate the services provided to Title I areas, on the average, be comparable to the non-Title I average?

Summary of Response

The suggestion that OE regulations be modified to require school districts to demonstrate that the aggregate of services in the Title I areas, on the average, be equal to services in the non-Title I areas (in contrast to the existing policy of comparing each Title I school with the non-Title I average) would be inconsistent with the present Title I statutory provision, as clarified by the legislative history.* Further, this suggestion could severly compromise the fundamental policy of Title I that funds be used to "expand and improve" the educational programs of educationally deprived children residing in each project area.

Employing an average for project area schools means, by definition that some Title I schools might be above and others below the average. To the extent there are Title I schools which are significantly underfunded, the children attending such schools would not be receiving supplemental services; rather, Title I funds would be used to replace state and local funds. The following example illustrates this point.

Project Area Schools		Non-Project Area Schools	
$800	$200	$400	$400
$200	$400	$400	$400

Project Area Average $400

Non-Project Area Average $400

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* If anything the legislative history suggests that each Title I school should be compared to the highest ranked non-Title I school. See e.g., 116 Cong. Record 10614 and 10615 (daily ed. April 7, 1970).

Clearly, the services provided with state and local funds in the project area schools receiving $200 per pupil will not be comparable to the non-project area schools receiving $400 per pupil. Therefore, the Title I funded services provided in those schools would not be supplemental. The following discussion contains a brief statement in support of these conclusions. For a comprehensive analysis of this issue see pages 568-595 of a paper prepared by the Legal Standards Project entitled, An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of ESEA.

The Comparability Provision Contained In The Title I Statute, As Clarified By The Legislative History, Requires That Each Title I Project Area School Receive Its Fair Of Services Paid For Out Of State and Local Funds

The Language of the Statute

Section 141(a)(3)(C) of the Title I statute provides that:

> State and local funds will be used... to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas...not receiving funds...".

Purpose of the Provision

The general purpose of the comparability provisions in relationship to the basic premise of the Title I legislation was expressed on the House floor by Congressman Quie of Minnesota (Volume 116, Part 8, 91st Congress, 2nd Session, at p. 10013);

> ...the whole purpose of Title I is to concentrate and increase efforts on behalf of disadvantaged children because these children need more help than their more fortunate peers. Unless comparable services are provided before the application of Title I funds in schools serving concentrations of poor children this purpose is defeated....

On p. 10613 Congressman Quie reiterated his understanding of the basic purpose of the provision:

> the purpose of this language is to assure that Title I funds are being used for compensatory education, not for educational programs that the school district provides in other non-Title I schools....

In short, the purpose of the comparability provision is to ensure that Title I funds are used for compensatory education. If any Title I project area school does not receive its fair share of resources, Title I funds will be used to pay for base rather than compensatory services.

The Phrase in the Statute, "Taken as a Whole" Modifies the Word "Services" and Not "Project Areas"

In support of the suggestion that the Title I average be compared with the non-Title I average, it has been contended that the phrase in the statute "taken as a whole" modifies the term "project areas" and not "services". The legislative history refutes this contention.

Representative Perkins at p. 10616 of the Congressional Record (April 7, 1970) explained that

> By the phrase "as a whole" the conferees intended that all the services available to students must be taken into consideration--books, equipment, and instructional staff [emphasis added].

Legislative History Indicates Congressional Concurrence With The Policy Of Ensuring That Each Project Area School Receive Services Comparable To Non-Title I Average

Several months prior to the date the comparability provision was added to the statute, OE issued Program Guide No. 57. This guideline included for the first time a provision requiring comparability reporting. The OE policy required the comparison of each Title I school with the non-Title I average. The legislative history indicates that (a) the concept of requiring comparability of services properly existed before Congress added it to the Title I statute and (b) Congress generally accepted OE's policy contained in Program Guide No. 57 respecting the proper method of comparison to be used.

Congressman Quie at p. 10613 explained that the comparability concept properly existed as part of the federal legal framework before Congress expressly added it to the Title I statute,

> I am confident that the law required this [comparability of services between poor schools and schools in more favored sections] even before the Senate added any specific language....

During the floor debate, Congressman Quie made reference to Program Guide No. 57 discussed supra, and indicated that the basic concepts adopted by OE in its program guide were adopted by Congress.

> ...the purpose of this language is to assure that Title I funds are being used for compensatory education, not for educational programs that the school district provides in other non-Title I schools. To assure that Title I funds are being spent over and above local and state funds, the Office of Education has asked school districts to provide state educational agencies with details concerning their Title I and non-Title I schools. The language reported by the conference is intended to reinforce the Office of Education's request. Unless the services offered in each school, taken as a whole, are compared against the services offered in a non-Title I school, the achievement of comparability cannot be ascertained... . (emphasis added)

Although OE's Present Policy Of Comparing Each Title I School With The Non-Title I Average Is Consistent With The Legislative History, This Approach Permits Substantial Inequities

Before Congress or OE considers modifying the existing policy, it is important to consider the degree of discrimination permitted under the existing policy. We have concluded that the averaging approach adopted by OE permits significant inequities resulting from the possible wide variations in the schools constituting the non-Title I average.

The following example is illustrative. In the example, School H is a Title I eligible school. However, because of limited funds, it is not a project area school and therefore is considered a non-Title I school for purposes of demonstrating comparability.

Title I Project Area Schools		Non-Project Area Schools	
A	C	E	G
$500	$500	$600	$600
B	D	F	H
$500	$500	$600	$200

In this hypothetical school district there are four project area schools and four non-project area schools, all having student enrollment of 800. The non-Title I average for instructional salaries per pupil is $500 ([600 + 600 + 600 + 200] ÷ 4 = 500). Without reference to the 5 percent leeway allowed under the Title I regulations, it is clear that comparability has been attained in this school district.

Three out of the four non-project area schools will have an additional $80,000 ($100 x 800) to spend on instructional services which will not be available to (a) the Title I eligible but unserved school and (b) any of the project area schools.

Summary

In sum, we have concluded that OE's policy of requiring school districts to demonstrate comparability of services by comparing each Title I school with the non-Title I average is required by the statute, as clarified by the legislative history. Further, this policy is sound and, if anything, permits too much flexibility, resulting in the possibility that educationally deprived children attending Title I schools will not receive their fair share of state and local funds. If any change is contemplated, it should be to ameliorate the present inequities inherent in using the non-Title I average. Proposed changes addressing this issue are contained in the paper cited to supra, at p. 590-592.

ISSUE NO. 2 MAINTENANCE OF COMPARABILITY

Issue Presented

Should school districts be required to demonstrate comparability as of a given point in time and then submit an assurance that comparability will be maintained or should the demonstration of comparability as of a given point in time be sufficient?

Summary of Response

We have concluded that OE's present policy requiring that school districts maintain comparability throughout the school year is (a) necessary to the integrity of the program, (b) permits sufficient flexibility, and (c) is not sufficiently comprehensive. In the following paragraphs we will briefly describe the existing legal framework; explain the purpose of the maintenance of comparability requirement; and finally explain why OE's existing policy provides sufficient flexibility, but is not sufficiently comprehensive.

The Present Legal Framework

Under the existing legal framework, local school districts must submit a comparability report to the state by a date certain. The data contained in the report must reflect the distribution of services as of a given point in time specified by the state.*

In addition to the comparability reporting requirement the regulations provide that the LEA must submit an assurance that comparability will be maintained throughout the year and that records will be maintained so that local, state, and federal officials may monitor conformity with the assurance.

In sum, the comparability regulation contains two basic requirements. First, school districts must demonstrate comparability as of a given point in time by completing a comparability report. Second, school districts must assure that comparability will be maintained. OE has developed two distinct enforcement schemes for ensuring conformity with these requirements.

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* 45 C.F.R. §116a.26(c)(1977) provides that with the approval of the State, an LEA may submit data based on averages for a definite reporting period which includes the date specified by the SEA.

Under the regulations, if an LEAs initial comparability report does not demonstrate comparability and the LEA does not submit a revised report by December 1 demonstrating comparability, the State must suspend its approval until the date a revised report demonstrating comparability is submitted. If a revised report is not submitted by March 31, the State must finally disapprove the LEA's application.

If a state finds that an LEA has not maintained comparability, the regulations require that the LEA be notified of its failure. The LEA must then take "prompt" action to correct its noncompliance status. If prompt action is not taken, the State must suspend approval until corrective action is taken.

The Purpose of the Maintenance of Comparability Requirement

The maintenance of comparability provision serves two important purposes. First, it ensures that the comparability report is not a sham. If the maintenance of comparability provision were deleted, an LEA, which discriminated against project area schools during the period preceding the date on which comparability data was collected, could simply redistribute services for the date comparability is reported, submit a report showing compliance, and then, on the next day, return the services to their initial location, i.e., return to the noncomparable status.

Secondly, the maintenance of comparability provision ensures that when there are significant shifts in student enrollment within a district that corresponding shifts in services will be effectuated. If, for example, the average pupil to teacher ratio in a district is 25 to 1 and a project area school's enrollment increases from 100 to 150 during the school year, the maintenance of comparability provision would require that this school receive two additional teachers.

OE's Present Policy Is Reasonable, Although There Is A Need For Clarification

The previous section explained the importance of the provision. The final question for consideration is whether the mechanics of the provision are unreasonable. We have concluded that the enforcement scheme concerning the maintenance of comparability requirement is reasonable because it takes into consideration the problems faced by LEAs concerning proving comparability on a day-to-day basis. As explained above, when a State finds that an LEA has failed to maintain comparability, it instructs the LEA to take "prompt" action to remedy the situation--the SEA does not have the authority to immediately suspend the LEA's Title I appropriation. What is not clear is whether HEW may seek repayment of the LEA's Title I appropriation based on an audit finding two years after the fact that an LEA has failed to maintain comparability.

We recommend that OE, in clarifying its policy, provide, at a minimum, that HEW is authorized to recoup misspent funds based on a finding that the LEA's comparability report was a sham or that the LEA has failed to use reasonable diligence in reallocating resources because of significant shifts in student enrollment. The amount of the LEA's liability should depend on the nature of the violation. This issue is discussed below.

ISSUE NO. 3 PROPORTIONATE PENALTIES FOR COMPARABILITY VIOLATIONS

Question Presented

An LEA that does not distribute, as of a date certain, its state and local funds in a manner that complies with the comparability requirement is ineligible to receive any Title I funds, i.e., the LEA is liable for its total Title I allocation. Should the law be changed to set liability at an amount less than the full Title I allocation in cases where the comparability violation involves improper distribution of an amount of funds less than the amount of the full Title I allocation? If so, under what circumstances?

Summary of Response

We have concluded that in cases of intentional violations, it is appropriate to retain the current approach which makes an LEA liable for the full amount of its allocation. In cases of violations by mistake, a graduated enforcement scheme would be appropriate.

The Existing Legal Framework

The legal framework, in actual operation, establishes the following sequence of events. During the summer the LEA submits its Title I application to the SEA. If the application is approved, the LEA begins operation of its program, i.e., the LEA may obligate Title I funds. An LEA prepares its comparability report using data collected by a date certain prior to November 1. If the determination reveals that the LEA is not in compliance, the LEA is granted a grace period involving no penalty whatsoever until December 1. If an LEA has not come into compliance by December 1, no more Title I funds may be obligated--the Title I funds are "suspended" until the LEA comes into compliance. If an LEA does not come into compliance by March 31, the LEA's application must be finally disapproved and its Title I allocation reallocated to other compliant LEAs.

Analysis

By the time March 31 arrives, an LEA not in compliance with the comparability requirement, as determined in its initial comparability report, has already been on notice of its lack of compliance for five months, including a grace period in which no penalty whatsoever was imposed. Thus, at this point, an LEA not in compliance is an LEA that is intentionally not in compliance. It is appropriate to deter intentional violations of the law. Hence, liability for the full amount of the Title I funds would seem to be an appropriate sanction, regardless of the degree of non-compliance.

If, on the other hand, an LEA makes an error in preparing the original comparability report such that the existence of a comparability violation is not discovered until, perhaps, an audit is prepared sometime after March 31, it would be appropriate if less harsh sanctions were available to the federal government. In such a case, the federal government should have authority to impose a penalty, the amount of which would vary depending on whether the error in preparing the original comparability report was excusable or whether the error was the result of negligence or perhaps gross negligence. This penalty could be the amount of the Title I funds allocated to the non-comparable school.

In any case of a comparability violation--intentional or mistaken--there are "victim schools" that have not received their fair share of state and local funds. In addition to a proportionate pay back policy resulting in the federal government recouping an amount of funds equal to the amount of the violation, it would be appropriate if the federal government had authority to directly order an LEA to make whole those schools that did not receive their fair share of funds.

We recommend that in cases of intentional violations, it is appropriate to retain the current approach which makes an LEA liable for the full amount of the Title I funds spent during the period of the violation. In addition to repaying this amount, it would also be appropriate to require the LEA to make whole the schools that were the victims of the violation.

In cases of violation by mistake, it would be appropriate if the federal government had the authority to impose a penalty which would vary in amount depending on whether the error was excusable or not. (Presumably, in no case should the penalty exceed the amount of the violation.) In addition, it would be appropriate in these cases to require the LEA to make whole the schools who were the victims of the violation.

Mr. Cross. Did you look at the Florida difficulty?

Mr. Long. One of our recommendations in the comparability area is that OE empirically study the problem. We have recommended five issues a contractor should look at and set out five conditions before any change or exemption from comparability should be granted for a Florida type situation.

It is really an empirical question rather than a legal question and I don't think the research has been done.

Mr. Cross. There won't be time to do the research before the committee has to act on the legislation in the next session.

In the absence of that, what can you suggest to us in dealing with that situation where, in a place like Florida, they are not penalized. I think it would be generally agreed that the notion is a good notion.

Mr. Silverstein. The data would have to be seen before a decision is made. One of the key points of comparability is the requirement that as of a given point in time that services be comparable and it is measured as to services rather than expenditures. That's very important. You will know if the children are actually receiving that expenditure, depending on what it is used for. In other words, it is hard for me to respond beyond that. I think it is really an empirical question and it is a legal question. If you grant an exemption, what, in fact, are the kinds of safeguards? Can you, in fact, administer that kind of thing? Again the possibility in this area is a demonstration based on Section 151 passed as an alternative. It uses the State of Florida as being part of that exemption.

Mr. Cross. Did you look into Florida and discover there was no significant problem?

Mr. Silverstein. No. I wish I could answer that question. We have a confidentiality agreement with the states visited so I can't answer that question.

Just one last point in terms of comparability.

A lot of persons have indicated problems in terms of flexibility but, in my opinion, the Office of Education through one of its regulations, has basically made comparability meaningless. There is one major exemption as to the economies of scale exemption in the present comparability regulations. They say if there are two schools in the district, one school twice the size of the second school, then you can divide the schools into groups.

So, if you have four schools with 800 children in Title I areas, and four non-Title I schools—three each having 799 and the fourth, 400; that school district is exempt from comparability because there are no non-Title I schools with 800 children. The difference between 800 and 799 is the key factor! I believe that is an example of where the Office of Education, by regulation, has, in fact, repealed the comparability provision in many cases.

Mr. Miller. Any other comments by members of the panel?

If not, the committee will adjourn. We want to thank you very much for your time and effort to get here. You scare me a little bit, Mr. Silverstein, because this is your statement and I just found out I have to go out to California and I thought I would take it with me. Then I hear there is a yellow book, green book; I can't carry that much on the plane.

But thank you very much.

The committee will reconvene on Tuesday, at 9:30.

[Whereupon, at 12:10 p.m., the subcommittee adjourned to reconvene at 9:30 a.m., Tuesday, November 1, 1977.]

APPENDICES

APPENDIX 1

PART II—ELEMENTARY AND SECONDARY PROGRAMS

Elementary and Secondary Education Act of 1965

TITLE I—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF CHILDREN OF LOW-INCOME FAMILIES[1]

DECLARATION OF POLICY

SEC. 101. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children.

(20 U.S.C. 241a) Enacted April 11, 1965, P.L 89–10, Title I, sec. 2, 79 Stat. 27; redesignated and amended January 2, 1968, P.L. 90–247, Title I, secs. 108(a)(2), 110, 81 Stat. 786, 787; amended April 13, 1970, P.L. 91–230, sec. 113(b)(2), 84 Stat. 126.

DURATION OF ASSISTANCE

SEC. 102. During the period beginning July 1, 1973, and ending September 30, 1978, the Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for grants made on the basis of entitlements created under this title.

(20 U.S.C. 241b) Enacted April 11, 1965, P.L. 89–10, Title I, sec. 2, 79 Stat. 27; amended Nov. 3, 1966, P.L. 89–750, Title I, sec. 101, 80 Stat. 1191; redesignated and amended Jan. 2, 1968, P.L. 90–247, Title I, secs. 108(a)(2), 110, Title III, sec. 301(a), 81 Stat. 786, 787, 813; amended April 13, 1970, P.L. 91–230, secs. 101(a), 113(b)(3), 84 Stat. 121, 126; amended August 21, 1974, P.L. 93–380, sec. 101(a)(1), 88 Stat. 488; amended April 21, 1976, P.L. 94–278, sec. 2(12), 90 Stat. 375.

PART A—BASIC GRANTS[2]

Subpart 1—Grants to Local Educational Agencies

GRANTS—AMOUNT AND ELIGIBILITY

SEC. 103. (a)(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under section 143(a) (other than payments under such section to jurisdictions excluded from the term "State" by this subsection, and payments pursuant to section 124), and there shall be authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1973 for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this title.

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[1] Section 205(7) of Title II of P.L. 94–274 (Enacted April 21, 1976. 90 Stat. 393, 394) provides that the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning October 1, 1976, for the purposes of Title I of the Elementary and Secondary Education Act of 1965.

[2] Sec. 101(a)(10) of P.L. 93–380 provides as follows:

"(10) There is authorized to be appropriated for each fiscal year a sum not to exceed $15,700,000 to be allocated at the discretion of the Commissioner to assist those local education agencies whose total allocation under part A of title I of the Elementary and Secondary Education Act of 1965 is 90 per centum or less than such allocation under such part A during the preceding fiscal year."

(2) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State shall be eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (A) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States. In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agent is located, which aggregate amount shall be equal to the aggregate amount determined under the two preceding sentences for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with basic criteria prescribed by the Commissioner.

(3)(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

(C) The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) by 40 per centum of (i) the average per pupil expenditure in Puerto Rico or (ii) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

(4) For purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) A local educational agency shall be eligible for a basic grant for a fiscal year under this part only if it meets the following requirements with respect to the number of children counted under subsection (c):

(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies for all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

(c)(1) The number of children to be counted for purposes of this section is the aggregate of (A) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A), (B) two-thirds of the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)

(B), and (C) the number of children aged five to seventeen, inclusive. in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to section 123 for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

(B) For purposes of this section, the Secretary of Health, Education, and Welfare shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January 1 of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.

(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under paragraph (A) of this subsection) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

(d)(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title, with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payments shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of section 141(a) and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of sections 141(a) and 142(a)(3).

(20 U.S.C. 241c) Enacted April 11, 1965, P.L. 89-10, Title I, sec. 2, 79 Stat. 28; amended July 21, 1965, P.L. 89-77, sec. 3, 79 Stat. 243; amended Nov. 1, 1965, P.L. 89-313, sec. 6(a), 79 Stat. 1161; amended Nov. 3, 1966, P.L. 89-750, Title I, secs. 102, 103(a), 104-108, 113(b), 117, 80 Stat. 1191-1198; redesignated and amended Jan. 2, 1968, P.L. 90-247, Title I, secs. 101, 103(a), 104, 105, 107, 108(a), 81 Stat. 783-787; amended Oct. 16, 1968, P.L. 90-576, Title III, sec. 307, 82 Stat. 1097; amended April 13, 1970, P.L. 91-230, secs. 101(b), 103, 104, 105, 106, 107, 113, 84 Stat. 121-124, 126; amended and subsection 103(a)(1)(C) added June 23, 1972, P.L. 92-318, sec. 411(b), 86 Stat. 338; amended August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 488, 491; amended April 21, 1976, P.L. 94-273, sec. 49(a), 49(b), 49(c), 90 Stat. 382.

Subpart 2—State Operated Programs

PROGRAMS FOR HANDICAPPED CHILDREN

SEC. 121. (a) A State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), shall be eligible to receive a grant under this section for any fiscal year.

NOTE.—Sec. 843(d) of P.L. 93-380, as amended by sec. 48(a) of P.L. 94-273, provides as follows:

"(d) Notwithstanding any provision of part A of title I of the Elementary and Secondary Education Act of 1965, the amount which the Commonwealth of Puerto Rico is eligible to receive under subpart 1 of such part A or under sections 121, 122, or 123 for the fiscal year ending June 30, 1975, shall not exceed 50 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such subpart or section but for this subsection, and for the fiscal years ending June 30, 1976, September 30, 1977, and September 30, 1978, such amount shall not exceed 75 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such subpart or section but for this subsection."

(b) Except as provided in sections 124 and 125, the grant which an agency (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States), multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

(c) A State agency shall use the payments made under this section only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of such children, and the State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

(d) In the case where such a child leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in subsection (c).

(20 U.S.C. 241c-2) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 491, 492.

PROGRAMS FOR MIGRATORY CHILDREN

SEC. 122. (a)(1) A State educational agency or a combination of such agencies, upon application, shall be entitled to receive a grant for any fiscal year under this section to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen. The Commissioner may approve such an application only upon his determination—

(A) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate these programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

(B) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part B of title III of the Economic Opportunity Act of 1964;

(C) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of clauses (1)(B) and (3) through (12) of section 141(a); and

(D) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool educational needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this clause will not detract from the operation of programs and projects described in clause (A) of this paragraph after considering the funds available for this purpose.

The Commissioner shall not finally disapprove an application of a State educational agency under this paragraph except after reasonable notice and opportunity for a hearing to the State educational agency.

(2) If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

(3) For purposes of this section, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this subsection. Such children who are presently migrant, as determined pursuant to regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this subsection.

(b) Except as provided in sections 124 and 125, the total grants which shall be made available for use in any State (other than Puerto Rico) for this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by (1) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and (2) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under subsection (a), the Commissioner shall allocate such excess, to the extent necessary, to other States whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. The total grant which shall be made available for use in Puerto Rico shall be arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

(20 U.S.C. 241c-2) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 492, 494.

PROGRAMS FOR NEGLECTED OR DELINQUENT CHILDREN

SEC. 123. (a) A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this section for any fiscal year (but only if grants received under this section are used only for children in such institutions).

(b) Except as provided in sections 124 and 125, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (1) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (2) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available. The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.

(c) A State agency shall use payments under this section only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of such children.

(20 U.S.C. 241c-3) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494.

RESERVATION OF FUNDS FOR TERRITORIES

Sec. 124. There is authorized to be appropriated for each fiscal year for purposes of each of sections 121, 122, and 123, an amount equal to not more than 1 per centum of the amount appropriated for such year for such sections for payments to Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands under each such section. The amounts appropriated for each such section shall be allotted among Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.

(20 U.S.C. 241c-4) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494.

MINIMUM PAYMENTS FOR STATE OPERATED PROGRAMS

Sec. 125. No State shall receive in any fiscal year prior to October 1, 1978, pursuant to sections 121, 122, or 123 an amount which is less than 100 per centum of the amount which that State received in the prior fiscal year pursuant to such section 121, 122, or 123, respectively.[1]

(20 U.S.C. 241c-5) Enacted August 21, 1974, P.L. 93-380. sec. 101, 88 Stat. 495; amended April 21, 1976, P.L. 94-273, sec. 3(8), 90 Stat. 376; amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(b)(1)(A), 90 Stat. 2236; P.L. 94-482, Title V, Part A, sec. 501(o), 90 Stat. 2238.

Part B—Special Incentive Grants

MAXIMUM ENTITLEMENT

Sec. 126. (a) In the case of any fiscal year ending after June 30, 1969, each State shall be entitled to a special incentive grant if such State has an effort index for the second preceding fiscal year that exceeds the national effort index for such year.

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[1] Section 501(b)(2) of Part A of Title V of P.L. 94-482 provides that the amendment made to Section 125 by Section 501(b)(1)(A) of Part A of Title V of P.L. 94-482 shall take effect on July 1, 1975.

(b) The maximum amount of a special incentive grant for which a State is eligible for any fiscal year shall be determined by multiplying the amount of $1 for each 0.01 per centum by which the effort index of that State for the second preceding fiscal year exceeds the national effort index for such year times the aggregate number of children counted for the purposes of entitled local educational agencies within such State to basic grants in accordance with sections 103(a)(2), 121, 122, and 123, except that no State shall be eligible to receive a special incentive grant under this part, in an amount in excess of 15 per centum of the total amount available for grants under this part.

(20 U.S.C. 241d) Enacted Sept. 30, 1950, c. 1124, Title I, § 121, formerly Title II, § 221, as added and redesignated Jan. 2, 1968, P.L. 90–247, Title I, secs. 108 (a)(5), 110, 81 Stat. 786, 787; amended April 13, 1970, P.L. 91–230, Title I, sec. 113(b)(6), 84 Stat. 126; redesignated August 21, 1974, P.L. 93–380, sec. 101 (a)(3), 88 Stat. 495; technical amendment clarifying redesignation enacted October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(a)(1), 90 Stat. 2235; further amended October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(b)(1)(B), 90 Stat. 2236.

APPLICATION; USE OF FUNDS

SEC. 127. Any State desiring the special incentive grant to which it is entitled under this part for any fiscal year shall make application therefor, in accordance with the requirements set forth in section 142, to the Commissioner. Such application shall be submitted at such time and contain such information as the Commissioner shall require by regulation and shall contain a statement of such policies and procedures as will insure that funds granted to the State under this part will be (1) made available to local educational agencies within that State which have the greatest need for assistance under this title, and (2) used, in accordance with the applicable provisions of this title, for programs and projects designed to meet the special educational needs of educationally deprived children.

(20 U.S.C. 241d–1) Enacted Sept. 30, 1950, c. 1124, Title I, § 121, formerly Title II, § 221, as added and redesignated Jan. 2, 1968, P.L. 90–247, Title I, secs. 108(a)(5), 110, 81 Stat. 786, 787; amended April 13, 1970, P.L. 91–230, Title I, sec. 113(b)(6), 84 Stat. 126; redesignated August 21, 1974, P.L. 93–380, sec. 101(a)(3), 88 Stat. 495; technical amendment clarifying redesignation enacted October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(a)(1), 90 Stat. 2235.

DEFINITIONS

SEC. 128. For the purpose of this part the term "effort index" when applied to States, means the per centum expressing the ratio of expenditures from all non-Federal sources in a State for public elementary and secondary education to the total personal income in such State, and the term "national effort index" means the per centum expressing the ratio of such expenditures in all States to the total personal income in all States; and the term "State" means the fifty States and the District of Columbia.

(20 U.S.C. 241d–2) Enacted Sept. 30, 1950, c. 1154, Title I, § 121, formerly Title II, § 221, as added and redesignated Jan. 2, 1968, P.L. 90–247, Title I, secs. 108(a)(5), 110, 81, Stat. 786, 787; amended April 13, 1970, P.L. 91–230, Title I, sec. 113(b)(6), 84 Stat. 127; redesignated August 21, 1974, P.L. 93–380, sec. 101(a)(3), 88 Stat. 495; technical amendment clarifying redesignation enacted October 12, 1976, P.L. 94–482, Title V, Part A, sec. 501(a)(1), 90 Stat. 2235.

PART C—SPECIAL GRANTS[1]

ELIGIBILITY AND MAXIMUM AMOUNT OF SPECIAL GRANTS

SEC. 131. (a) Each local educational agency in a State which is eligible for a grant under this title for any fiscal year shall be entitled to an additional grant for that fiscal year if it meets the requirements of subsection (b). The amount of such grant shall be determined in accordance with subsection (c).

(b) (1) A local educational agency shall be entitled to a grant under this part for any fiscal year if the school district of such agency is located in a county in which—

(A) the number of children described in paragraph (2) for such year amounts to at least 200 per centum of the average number of such children in all counties in the State in which such agency is located for that fiscal year; or

(B) the number of children so described in such county for such year is 10,000 and amounts to 5 per centum of the total number of children in such county.

(2) For the purposes of paragraph (1), the children counted with respect to a local educational agency shall be those children in the such county who are—

(A) in families having an annual income of $3,000 or less; or

(B) in families receiving an annual income in excess of $3,000 from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; or

(C) living in institutions for neglected or delinquent children or being supported in foster homes with public funds.

(3) (A) Determinations with respect to numbers of children in any county under paragraph (2) shall be made by the Commissioner on the basis of the most recent satisfactory data available to him.

(B) (i) The number of children determined with respect to one or more counties shall be allocated by the Commissioner, for the purposes of paragraph (2), among the local educational agencies with school districts located in such county or counties.

(ii) In any case where—

(I) two or more local educational agencies serve, in whole or in part, the same geographical area; or

(II) a local educational agency provides free public education for a substantial number of children who reside in the school district of another local educational agency,

the Commissioner may allocate the number of children determined under this subsection among such agencies in such a manner as will best achieve the purposes of this section.

(C) (i) For the purposes of paragraph (2), the Commissioner shall determine the number of children from families having an annual income of $3,000 or less on the basis of the most recent satisfactory data available from the Department of Commerce. At any time such data for a county are available in the Department of Commerce, such data shall be used in making calculations under this subsection.

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[1] Section 101(a)(4)(B) of P.L. 93-380 repeals Part C, effective July 1, 1975.

(ii) For the purposes of this subsection, the Secretary of Health, Education, and Welfare shall determine the number of children from families receiving an annual income in excess of $3,000 from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act and the number of children living in institutions for neglected or delinquent children or being supported in foster homes with public funds, on the basis of caseload data for the month of January of the preceding fiscal year, or to the extent that such data are not available to him before April 1 of the calendar year in which the determination is made, then on the basis of the most recent data available to him at the time of such determination. For the purposes of this subsection, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

(c) The amount of the grant to which a local educational agency shall be entitled for any fiscal year shall be—

(A) the number of children determined with respect to such agency under subsection (b);

multiplied by—

(B) 50 per centum of the average per pupil expenditure of all the local educational agencies in the State in which such agency is located.

(d) Notwithstanding any other provision of this section, no payments for any fiscal year under this part to the local educational agencies in a single State shall exceed 12 per centum of the aggregate payments to all local educational agencies in that year under this part.

(e) (1) The aggregate of the amount for which all local educational agencies are eligible under this part shall not exceed $75,000,000 for any fiscal year. If, for any fiscal year, such aggregate, as computed without regard to the preceding sentence, exceeds $75,000,000, the amount for which each local educational agency is eligible shall be reduced ratably until such aggregate does not exceed such limitation.

(2) For the purpose of making payments under this part there are authorized to be appropriated not in excess of $75,000,000 for the fiscal year ending June 30, 1975.

(f) For the purposes of this section, the term—

(1) "State" means the fifty States and the District of Columbia; and

(2) "children" includes all children aged 5 through 17, inclusive.

(20 U.S.C. 241 d-11) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 495, 496.

PART D.—GENERAL PROVISIONS

APPLICATION

SEC. 141 (a) A local educational agency may receive a grant under this title for any fiscal year only upon application therefor approved by the appropriate State educational agency, upon its determination (consistent with such basic criteria as the Commissioner may establish)—

(1) that payment under this title will be used for the excess costs of programs and projects (including the acquisition of

equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools eligible for assistance under this title, the training of teachers, and, where necessary, the construction of school facilities and plans made or to be made for such programs, projects, and facilities) (A) which are designed to meet the special educational needs of educationally deprived children in school attendance areas having high concentrations of children from low-income families (and at the discretion of the local educational agency, in any school of such agency not located in such a school attendance area, at which the proportion of children in actual average daily attendance from low-income families is substantially the same as the proportion of such children in such an area of that agency) and (B) which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting those needs and to this end involve an expenditure of not less than $2,500, except that the State educational agency may with respect to any applicant reduce the $2,500 requirement if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for the applicant to join effectively with other local educational agencies for the purpose of meeting the requirement; and nothing herein shall be deemed to preclude two or more local educational agencies from entering into agreements, at their option, for carrying out jointly operated programs and projects under this title: *Provided*, That the amount used for plans for any fiscal year shall not exceed 1 per centum of the amount determined for that agency for that year pursuant to section 103 or $2,000, whichever is greater;

(2) that the local educational agency has provided satisfactory assurance that section 141A will be complied with;

(3) That (A) the total educational agency has provided satisfactory assurance that the control of funds provided under this title, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this title, and that a public agency will administer such funds and property, (B) Federal funds made available under this title will be so used (i) as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this title, and (ii) in no case, as to supplant such funds from non-Federal sources, and (C) State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title: *Provided*, That any finding of noncompliance with this clause shall not affect the payment of funds to any local educational agency until the fiscal year beginning July 1, 1972, and *Provided further*, That each local educational agency receiving funds under this title shall report on or before July 1, 1971, and on or

before July 1 of each year thereafter with respect to its compliance with this clause;[1]

(4) In the case of any project for construction of school facilities, that the project is not inconsistent with overall State plans for the construction of school facilities and that the requirements of section 433 of the General Education Provisions Act will be complied with on all such construction projects;

(5) In the case of an application for payments for planning, (A) that the planning was or will be directly related to programs or projects to be carried out under this title and has resulted, or is reasonably likely to result in a program or project which will be carried out under this title, and (B) that planning funds are needed because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary to plan adequately for programs and projects to be carried out under this title;

(6) That effective procedures, including provisions for appropriate objective measurements of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of educationally deprived children;

(7) That the local educational agency will make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, including information relating to the educational achievement of students participating in programs carried out under this title, and will keep such records and afford such access thereto as the State educational agency may find necessary to assure the correctness and verification of such reports;

(8) That the local educational agency is making the application and all pertinent documents related thereto available to parents and other members of the general public and that all evaluations and reports required under paragraph (7) shall be public information;

(9) In the case of a project for the construction of school facilities, that, in developing plans for such facilities due consideration has been given to compliance with such standards as the Secretary may prescribe or approve in order to insure that facilities constructed with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons;

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[1] Sec. 109(b) of Public Law 91–230 reads as follows:

"(b) The amendment made by subsection (a) shall be effective with respect to all applications submitted to State educational agencies after thirty days after the date of enactment of this Act. Nothing in this section shall be construed to authorize the supplanting of State and local funds with Federal funds prior to the effective date of the amendment made by this section."

(10) That effective procedures will be adopted for acquiring and disseminating to teachers and administrators significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects;

(11) In the case of a project for the construction of school facilities, that, in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project);

(12) In the case of projects involving the use of education aides, the local educational agency sets forth well-developed plans providing for coordinated programs of training in which education aides and the professional staff whom they are assisting will participate together;

(13) That, where a school attendance area does not meet the requirement of paragraph (1)(A) of this subsection for a fiscal year, or in the case of a local educational agency electing to allocate funds under section 150 where such an area does not meet the requirement of that section, but did meet the appropriate requirement in either of the two preceding fiscal years, that school attendance area shall be considered to meet the applicable criterion for that fiscal year; and

(14) That the local educational agency shall establish an advisory council for the entire school district and shall establish an advisory council for each school of such agency served by a program or project assisted under section 143(a)(2), each of which advisory councils—

(A) has as a majority of its members parents of the eligible children to be served,

(B) is composed of members selected by the parents in each school attendance area,

(C) has been given responsibility by such agency for advising it in the planning for, and the implementation and evaluation of, such programs and projects, and

(D) is provided by such agency, in accordance with regulations of the Commissioner, with access to appropriate information concerning such programs and projects.

(b) It is the intent of the Congress to encourage, where feasible, the development for each educationally deprived child participating in a program under this title of an individualized written educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, a parent or guardian of the child, and when appropriate, the child.

(c) The State educational agency shall not finally disapprove in whole or in part any application for funds under this title without first affording the local educational agency submitting the application reasonable notice and opportunity for a hearing.

(20 U.S.C. 241e) Enacted April 11, 1965, P.L. 89-10, Title I, sec. 2, 79 Stat. 30; amended Nov. 3. 1966. P.L. 89-750. Title I, secs. 103(b), 108(b)(1), (2), 110, 111(a)-(e), 80 Stat. 1192, 1195, 1196; redesignated and amended Jan 2, 1968, P.L. 90-247, Title I, secs. 103(b), 106, 108(a)(2), 109, 110, 81 Stat. 783, 784, 786,

787; redesignated and amended April 13, 1970, P.L. 91-230, Title I, secs. 108, 109(a), 110, 111(b), 113(b)(3), (4), (7), 84 Stat. 124-126, 128; amended June 23, 1972, P.L. 92-318, sec. 507(a) and (b), 86 Stat. 352; amended August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 496, 497; amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(b)(1)(C), 501(b)(1)(D), 90 Stat. 2236.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

SEC. 141A. (a) To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirements of clauses (A) and (B) of paragraph (1) of subsection (a) of section 141, paragraph (2) of subsection (a) of such section, and clauses (A) and (B) of paragraph (3) of subsection (a) of such section 141.

(b)(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement and the provisions of section 141(a)(2), and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of paragraph (a) and section 141 (a)(2) shall be waived.

(3) When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under this title.

(4) (A) the Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least sixty days notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

(B) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 241e-1) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 497, 498.

ASSURANCES FROM STATES

SEC. 142. (a) Any State desiring to participate under this title (except with respect to the program provided for in section 122 relating to migratory children of migratory agricultural workers) shall submit through its State educational agency to the Commissioner an application, in such detail as the Commissioner deems necessary, which provides satisfactory assurance—

(1) that, except as provided in section 143(b), payments under this title will be used only for programs and projects which have been approved by the State educational agency pursuant to section 141(a) and which meet the applicable requirements of that section and of section 121 and that such agency will in all other respects comply with the provisions of this title, including the enforcement of any obligations imposed upon a local educational agency under section 141(a);

(2) that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to local educational agencies) under this title; and

(3) that the State educational agency will make to the Commissioner (A) periodic reports (including the results of objective measurements required by section 141(a)(6) and of research and replication studies) evaluating the effectiveness of payments under this title and of particular programs assisted under it in improving the educational attainment of educationally deprived children, and (B) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this title (including such reports as he may require to determine the amounts which the local educational agencies of that State are eligible to receive for any fiscal year), and assurance that such agency will keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(b) The Commissioner shall approve an application which meets the requirements specified in subsection (a), and he shall not finally disapprove an application except after reasonable notice and opportunity for a hearing to the State educational agency.

(20 U.S.C. 241f) Enacted April 11, 1965, P.L. 89–10, Title I, sec. 2, 79 Stat. 31; amended Nov. 1, 1965, P.L. 89–318, sec. 6(b), 79 Stat. 1162; amended Nov. 8, 1966, P.L. 89–750, Title I, sec. 103(c)(1), 80 Stat. 1193; redesignated and amended Jan. 2, 1968, P.L. 90–247, Title I, secs. 103(c), 108(a)(2), 110, 81 Stat. 783, 786, 787; redesignated and amended April 13, 1970, P.L. 91–230, Title I, secs. 111(a), 113(b)(3), (4), 84 Stat. 125, 126.

PAYMENT

SEC. 143. (a) (1) The Commissioner shall, subject to the provisions of section 144, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

(2) From the funds paid to it pursuant to paragraph (1) each State educational agency shall distribute to each local educational agency of the State which is not ineligible by reason of section 103(b) and which has submitted an application approved pursuant to section 141(a) the amount for which such application has been approved except that this amount shall not exceed the amount determined for that agency pursuant to section 103.

(b) The Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title (including technical assistance for the measurements and evaluations required by section 141(a)(6), except that the total of such payments in any fiscal year shall not exceed—

(1) 1 per centum of the amount allocated to the State and its local educational agencies as determined for that year under this title; or

(2) $150,000, or $25,000 in the case of Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, whichever is the greater.

(c) (1) No payments shall be made under this title for any fiscal year to a State which has taken into consideration payments under this title in determining the eligibility of any local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the preceding fiscal year.

(2) No payments shall be made under this title to any local educational agency for any fiscal year unless the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

(20 U.S.C. 241g) Enacted April 11, 1965, P.L. 89–10, Title I, sec. 2, 79 Stat. 32; amended Nov. 1, 1965, P.L. 89–313, sec. 7(a), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89–750, Title I, secs. 103(c)(2), 108(b)(3), 112, 113(a), 80 Stat. 1193, 1195, 1197; redesignated and amended Jan. 2, 1968, P.L. 90–247, Title I, secs. 102, 103(c), 108(a)(2), 110, 81 Stat. 783, 786, 787; redesignated and amended April 13, 1970, P.L. 91–230, Title I, secs. 113(b)(3), (4), (8), 114, 84 Stat. 126, 129, 130; amended October 12, 1976, P.L. 94–482, Title III, Part B, sec. 323(a)(1), 90 Stat. 2217.

ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

SEC. 144. If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under section 121, 122, or 123 shall be equal to the total amount of the grant as computed under each such section. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under part A of this title for such year, the allocations to such agencies and allocations under part B shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated, except that entitlements under such part B shall be taken into consideration only to the extent that appropriations for such title I (excluding part C thereof) exceed $1,396,975,000 for any fiscal year and such entitlements shall not exceed $50,000,000 in any fiscal year. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 per centum of its allocation for such year. If the aggregate of the amounts to which all States are entitled under such part B exceeds $50,000,000 the entitlement of each State shall be reduced ratably until such aggregate does not exceed $50,000,000 in such fiscal year.

In case additional funds become available for making payments under this title or that year, such reduced amounts shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State, and (2) State educational agencies referred to in section 122 must file applications. If the maximum grant a local educational agency or an agency referred to in section 122 would receive (after any ratable reduction which may have been required under the first sentence of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of paragraph (2) of section 103(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

(20 U.S.C. 241h) Enacted April 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 33; amended Nov. 3, 1966, P.L. 89-750, Title I, sec. 114, 80 Stat. 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, Title I, secs. 107(b), 110, 81 Stat. 785, 787; redesignated and amended April 13, 1970, P.L. 91-230, Title I, sec. 113(b)(3), (4)(c), and (d), 84 Stat. 126, 129; amended August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 498, 499.

WITHHOLDINGS

Sec. 146. Whenever the Commissioner, after reasonable notice and opportunity for hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in the application of that State approved under section 122 or 142(b) the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this title, or payments by the State educational agency under this title shall be limited to local educational agencies not affected by the failure, as the case may be.

(20 U.S.C. 241j) Enacted April 11, 1965, P.L. 89-10, Title I, sec. 2, 79 Stat. 33; amended Nov. 3, 1966, P.L. 89-750, Title I, sec. 103(c)(3), 80 Stat. 1193; redesignated and amended Jan. 2, 1968, P.L. 90-247, Title I, secs. 108(a)(4), (c), 110, 81 Stat. 786, 787; amended and redesignated April 13, 1970, P.L. 91-230, Title I, sec. 113(b)(4), (9), 84 Stat. 126, 129.

JUDICIAL REVIEW

Sec. 147. (a) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under section 122 or 142(b) or with his final action under section 146, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 241k) Enacted April 11, 1965, P.L. 89-10, Title I, sec. 2, 79 Stat. 33; amended Nov. 3, 1966, P.L. 89-750, Title I, sec. 103(c)(4), 80 Stat. 1193; redesignated and amended Jan. 2, 1968, P.L. 90-247, Title I, secs. 108(a)(4), (b), 110, 81 Stat. 786, 787; amended and redesignated April 13, 1970, P.L. 91-230, Title I, sec. 113(b)(4), (10), 84 Stat. 125, 129.

NATIONAL ADVISORY COUNCIL

SEC. 148. (a) There shall be a National Advisory Council on the Education of Disadvantaged Children (hereinafter in this section referred to as the "National Council") consisting of fifteen members appointed by the President, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, for terms of three years, except that (1) in the case of initial members, five shall be appointed for terms of one year each and five shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be only for such terms as remain unexpired. The National Council shall meet at the call of the Chairman.

(b) The National Council shall review and evaluate the administration and operation of this title, including its effectiveness in improving the educational attainment of educationally deprived children, including the effectiveness of programs to meet their occupational and career needs, and make recommendations for the improvement of this title and its administration and operation. These recommendations shall take into consideration experience gained under this and other Federal educational programs for disadvantaged children and, to the extent appropriate, experience gained under other public and private educational programs for disadvantaged children.

(c) The National Council shall make such reports of its activities, findings, and recommendations (including recommendations for changes in the provisions of this title) as it may deem appropriate and shall make an annual report to the President and the Congress not later than March 31 of each calendar year. Such annual report shall include a report specifically on which of the various compensatory education programs funded in whole or in part under the provisions of this title, and of other public and private educational programs for educationally deprived children, hold the highest promise for raising the educational attainment of these educationally deprived children. The President is requested to transmit to the Congress such comments and recommendations as he may have with respect to such report. Subject to section 448(b) of the General Education Provisions Act, the National Council shall continue to exist until October 1, 1978.

(20 U.S.C. 241l) Enacted April 11, 1965, P.L. 89-10, Title I, sec. 2, 79 Stat. 34; amended Nov. 3, 1966, P.L. 89-750, Title I, sec. 115, 80 Stat. 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, Title I, secs. 108(a)(4), 110, 114, 81 Stat. 786-788; amended and redesignated April 13, 1970, P.L. 91-230, Title I, secs. 112, 113(b)(4), 84 Stat. 125, 126; amended August 21, 1974, P.L. 93-380, sec. 845(a), 88 Stat. 612; amended April 21, 1976, P.L. 94-273, sec. 3(8), 90 Stat. 376.

TREATMENT OF EARNINGS FOR PURPOSES OF AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 149. (a) Notwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (A) in determining the need of such person under such approved State plan or (B) in determining the need of any other individual under such approved State plan.

(b) Notwithstanding the provisions of subsection (a) of this section, no funds to which a State is otherwise entitled under title IV of the Social Security Act for any period before the fourth month after the adjournment of the State's first regular legislative session which adjourns more than sixty days after enactment of the Elementary and Secondary Education Amendments of 1966, shall be withheld by reason of any action taken pursuant to a State statute which prevents such State from complying with the requirements of subsection (a) of this section.

(20 U.S.C. 241m) Enacted Nov. 3, 1966, P.L. 89-750, Title I, sec. 109, 80 Stat. 1195; redesignated Jan. 2, 1968, P.L. 90-247, Title I, secs. 108(a)(4), 110, 81 Stat. 786, 787; redesignated April 13, 1970, P.L. 91-230, Title I, sec. 113(b)(4), 84 Stat. 126.

ALLOCATION OF FUNDS WITHIN THE SCHOOL DISTRICT OF A LOCAL EDUCATIONAL AGENCY

SEC. 150. (a) For any fiscal year not more than 20 local educational agencies selected for the purpose of section 821(a)(5) of the Education Amendments of 1974 may elect, with the approval of the district-wide parent advisory council which is required to be established under section 141(a)(14) of this title, to allocate funds received from payments under this title on the basis of a method or combination of methods other than the method provided under section 141(a)(1)(A). Any method selected pursuant to this section shall be so designed and administered as to be free from racial or cultural discrimination.

(b) Any local educational agency to which this section applies shall submit such reports to the Director of the National Institute of Education at such time and in such manner as the Director may reasonably require to carry out his responsibilities under section 821(a)(5) of the Education Amendments of 1974.

(20 U.S.C. 241n) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 499.

PROGRAM EVALUATION

SEC. 151. (a) The Commissioner shall provide for independent evaluations which describe and measure the impact of programs and projects assisted under this title. Such evaluations may be provided by contract or other arrangements, and all such evaluations shall be made by competent and independent persons, and shall include, whenever possible, opinions obtained from program or project participants about the strengths and weaknesses of such programs or projects.

(b) The Commissioner shall develop and publish standards for evaluation of program or project effectiveness in achieving the objectives of this title.

(c) The Commissioner shall, where appropriate, consult with State agencies in order to provide for jointly sponsored objective evaluation studies of programs and projects assisted under this title within a State.

(d) The Commissioner shall provide to State educational agencies, models for evaluations of all programs conducted under this title, for their use in carrying out their functions under section 142(a), which shall include uniform procedures and criteria to be utilized by local educational agencies, as well as by the State agency in the evaluation of such programs.

(e) The Commissioner shall provide such technical and other assistance as may be necessary to State educational agencies to enable them to assist local educational agencies in the development and application of a systematic evaluation of programs in accordance with the models developed by the Commissioner.

(f) The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques (such as longitudinal studies of children involved in such programs) and methodology (such as the use of tests which yield comparable results) for producing data which are comparable on a statewide and nationwide basis.

(g) The Commissioner shall make a report to the respective committees of the Congress having legislative jurisdiction over programs authorized by this title and the respective Committees on Appropriations concerning his progress in carrying out this section not later than February 1, 1975, and thereafter he shall report to such committees no later than February 1 of each calendar year the results of the evaluations of programs and projects required under this section, which shall be comprehensive and detailed, as up-to-date as possible, and based to the maximum extent possible on objective measurements, together with any other related findings and evaluations, and his recommendations with respect to legislation.

(h) The Commissioner shall also develop a system for the gathering and dissemination of results of evaluations and for the identification of exemplary programs and projects, or of particularly effective elements of programs and projects, and for the dissemination of information concerning such programs and projects or such elements thereof to State and local educational agencies responsible for the design and conduct of programs and projects under this title, and to the education profession and the general public.

(i) The Commissioner is authorized, out of funds appropriated to carry out this title in any fiscal year, to expend such sums as may be necessary to carry out the provisions of this section, but not to exceed one-half of 1 per centum of the amount appropriated for such program, of which $5,000,000 for each fiscal year ending prior to October 1, 1977, shall be available only for the surveys and studies authorized by section 821 of the Education Amendments of 1974. In carrying out the provisions of this section, the Commissioner shall place priority on assisting States and local educational agencies to conduct evaluations and shall, only as funds are available after fulfilling that purpose, seek to conduct any national evaluations of the program.

(20 U.S.C. 241o) Enacted August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 499, 500; amended April 21, 1976, P.L. 94-273, sec. 3(8), 90 Stat. 376; further amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(b)(1)(E), 90 Stat. 2236; further amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(p), 90 Stat. 2238.

SHORT TITLE

SEC. 152. This title my be cited as "Title I of the Elementary and Secondary Education Act of 1965."

Enacted Nov. 3, 1966, P.L. 89-750, Title I, sec. 116, 80 Stat. 1198; redesignated Jan. 2, 1968, P.L. 90-247, Title I, secs. 108(a)(4), 110, 81 Stat. 786, 787; redesignated April 13, 1970, P.L. 91-230, sec. 113(b)(4), 84 Stat. 126; redesignated August 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 499.

TITLE IV (P.L. 81-874)—GENERAL

ADMINISTRATION

SEC. 401.[1] (a) (Repealed).

(b) The Commissioner shall administer this Act, and he may make such regulations and perform such other functions as he finds necessary to carry out the provisions of this Act.

(c) The Commissioner shall include in his annual report to the Congress a full report of the administration of his functions under this Act, including a detailed statement of receipts and disbursement.

(20 U.S.C. 242) Enacted Sept. 30, 1950, c. 1124, P.L. 874, 81st Cong., sec. 7, 64 Stat. 1107; redesignated as Title III, sec. 301, April 11, 1965, P.L. 89-10, Title I, sec. 3(c)(1), 79 Stat. 35; amended Nov. 3, 1966, P.L. 89-750, Title II, sec. 205, 80 Stat. 1212; subsection (a) repealed April 13, 1970, P.L. 91-230, Title IV, sec. 401(f)(1) and superseded by sec. 422 of P.L. 90-247, Title IV, as amended (20 U.S.C. 1232a); redesignated June 23, 1972, P.L. 92-318, sec. 411, 86 Stat. 334.

USE OF OTHER FEDERAL AGENCIES; TRANSFER AND AVAILABILITY OF APPROPRIATIONS

SEC. 402. (a) In carrying out his functions under this Act, the Commissioner is authorized, pursuant to proper agreement with any other Federal department or agency, to utilize the services and facilities of such department or agency, and, when he deems it necessary or appropriate, to delegate to any officer or employee thereof the function under section 6 of making arrangements for providing free public education. Payment to cover the cost of such utilization or of carrying out such delegated function shall be made either in advance or by way of reimbursement, as may be provided in such agreement.

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may occasion assistance under title I, shall to the maximum extent practicable comply with requests of the Commissioner for information he may require in carrying out the purposes of title I.

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[1] Title IV and section 401 of the Act of Sept. 30, 1950, P.L. 81-874. References in this title to Title I of the Elementary and Secondary Education Act of 1965, are to its original designation on enactment, "Title II" of Public Law 81-874.

Provisions of this title (as well as provisions of other acts) repealed by P.L. 91-230 are superseded by provisions of the General Education Provisions Act, as added by Title IV of P.L. 91-230, amendments to Title IV of P.L. 90-247.

(c) Such portion of the appropriations of any other department or agency for the fiscal year ending June 30, 1951, as the Director of the Bureau of the Budget determines to be available for the same purposes as title I, shall, except to the extent necessary to carry out during such year contracts made prior to the enactment of title I, be transferred to the Commissioner for use by him in carrying out such purposes.

(d) No appropriation to any department or agency of the United States, other than an appropriation to carry out this Act, shall be available for the employment of teaching personnel for the provision of free public education for children in any State or for payments to any local educational agency (directly or through the State educational agency) for free public education for children, except that nothing in the foregoing provisions of this subsection shall affect the availability of appropriations for the maintenance and operation of school facilities (1) on Federal property under the control of the Atomic Energy Commission or (2) by the Bureau of Indian Affairs, or the availability of appropriations for the making of payments directed to be made by section 91 of the Atomic Energy Community Act of 1955, as amended, or the availability of appropriations under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act (25 U.S.C., sec. 452).

(20 U.S.C. 243) Enacted Sept. 30, 1950, c. 1124, P.L. 874, 81st Cong., Title III, sec. 302, formerly sec. 8, 64 Stat. 1108; amended Aug. 8, 1953, c. 402, P.L. 248, 83d Cong., sec. 9, 67 Stat. 536; amended Aug. 4, 1955, c. 543, c. 11, P.L. 221, 84th Cong., sec. 202, 69 Stat. 485; amended Aug. 12, 1955, c. 868, P.L. 382, 84th Cong., sec. 1, 69 Stat. 713; amended Aug. 3, 1956, c. 915, P.L. 949, 84th Cong., Title II, sec. 210, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85-620, Title II, sec. 204, 72 Stat. 560; redesignated and amended April 11, 1965, P.L. 89-10, Title I, sec. 3(c), 79 Stat. 35; amended April 13, 1970, P.L. 91-230, Title IV, sec. 401(c)(1), 84 Stat. 173. Repealed provision superseded by sec. 411 of P.L. 90-247, Title IV, as amended (20 U.S.C. 1231(a)); redesignated June 23, 1972, P.L. 92-318, sec. 411, 86 Stat. 334.

DEFINITIONS

SEC. 403. For the purposes of this Act—

(1) The term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes (A) except for purposes of section 6, real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any property considered prior to such sale or transfer to be Federal property for the purposes of this act, (C) any low-rent housing whether or not owned by the United States which is part of a low-rent housing project assisted under the United States Housing Act of 1937, section 516 of the Housing Act of 1949, or part B of title III of the Economic Opportunity Act of 1964, and (D) any school which is providing flight training to members of the Air Force under contractual arrangements

with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal services.

(2) The term "child," except as used in title II, means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that for the purposes of title II such term does not include any education provided beyond grade 12.

(5) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under title II of this Act or title II or III of the Elementary and Secondary Education Act of 1965.

(6) (A) For purposes of title I, the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education.

(B) For purposes of title II, the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school, and it also includes (except for purposes of sections 203(a)(2), 203(b), and 205(a)(1)) any State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education) or for children in institutions for neglected or delinquent children.

(7) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(8) The term "State" means a State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, or the Virgin Islands, and for purposes of title II, such term includes the Trust Territory of the Pacific Islands.

(9) The terms "Commissioner of Education" and "Commissioner" means the United States Commissioner of Education.

(10) Average daily attendance shall be determined in accordance with State law, except that (A) the average daily attendance of children with respect to whom payment is to be made under section 3 or 4 of this Act shall be determined in accordance with regulations of the Commissioner, and (B) not withstanding any other provision of this Act, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this Act the attendance of such child at such school shall be held and considered (i) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (ii) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

(11) The term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

(12) The term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(13) The term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(14) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

(15) For the purpose of title II, the term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(16) For purposes of title II, the "average per pupil expenditure" in a State, or in the United States, shall be the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available, of all local educational agencies as defined in section 403(6)(B) in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(17) For the purposes of title II, "excess costs" means those costs directly attributable to programs and projects which exceed the average per pupil expenditure of a local educational agency in the most recent year for which satisfactory data are available for pupils in the grade or grades included in such programs or projects (but not including expeditures for any comparable State or local special programs, for educationally deprived children or expenditures for bilingual programs or special education for handicapped children or children with specific learning disabilities, if such expenditures for bilingual education and special education are used to provide, to children of limited English-speaking ability and handicapped children, and children with specific learning disabilities who reside in title I project areas, services which are comparable to those provided to similarly disadvantaged children residing in nonproject areas).

(20 U.S.C. 244) Enacted Sept. 30, 1950, c. 1124, P.L. 874, 81st Cong., Title III, sec. 303, formerly sec. 9, 64 Stat. 1108; amended Aug. 8, 1953, c. 402, P.L. 248, 83d Cong., sec. 10, 67 Stat. 536; amended Aug. 1, 1956, c. 852, P.L. 896, 84th Cong., sec. 10, 70 Stat. 909; amended Aug. 3, 1956, c. 915, P.L. 949, 84th Cong., Title II, sec. 211, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85–620, Title II, sec. 205, 72 Stat. 560; amended June 25, 1959, P.L. 86–70, sec. 18(d)(4), 73 Stat. 145; amended July 12, 1960, P.L. 86–624, sec. 14(d)(4), 74 Stat. 414; amended Oct. 16, 1964, P.L. 88–665, Title XI, sec. 1102(b), 78 Stat. 1109; redesignated, and amended April 11, 1965, P.L. 89–10, Title I, secs. 3(c)(1), 4(a)-(c), (d)(1), (e), 79 Stat. 35; amended Nov. 1, 1965, P.L. 89-313, sec. 6(c), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89-750, Title I, sec. 117(a)(1), (b), Title II, sec. 206, 80 Stat. 1198, 1199, 1213; amended Jan. 2, 1968, P.L. 90–247, Title II, sec. 201, 81 Stat. 806; amended April 13, 1970, P.L. 91–230, Title II, sec. 203(b), 84 Stat. 156. Amendment effective after June 30, 1970; redesignated June 23, 1972, P.L. 92–318, sec. 411, 86 Stat. 334; amended August 21, 1974, P.L. 93–380, sec. 101, 88 Stat. 501.

Elementary and Secondary Education Act of 1965

(P.L. 89–10)

TITLES II, III, V, VII, AND VIII

AN ACT To strengthen and improve educational quality and educational opportunities [illegible] Nation's elementary and secondary schools

Be it enacted [illegible] *nate and House of Representatives of the United States* [illegible] *Congress assembled*, That this Act may be cited as th [illegible] nd Secondary Education Act of 1965".

APPENDIX 2

federal register

TUESDAY, SEPTEMBER 28, 1976

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934

PART IV:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED, NEGLECTED AND DELINQUENT CHILDREN

Reorganization

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

Reorganization

In accordance with Section 503 of the Education Amendments of 1972 (Pub. L. 92–318) and pursuant to the authority of Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 241a, et seq.), a notice of proposed rulemaking was published in the FEDERAL REGISTER on March 11, 1975, (40 FR 11472) setting forth (a) in proposed 45 CFR Part 116, the general requirements for local and State educational agencies and certain other State agencies for participation in financial assistance provided under Title I of the Elementary and Secondary Education Act, and (b) in proposed 45 CFR Part 116a, specific requirements for the participation in such assistance of local educational agencies having jurisdiction over school districts or similar political subdivisions in their respective States.

Parts 116b, 116c, and 116d will be published separately.

At present there are no guidelines related to Parts 116 or 116a. Should such guidelines be issued in the future, they will be published in the FEDERAL REGISTER and will be limited to material in the nature of suggestions or recommended courses of action for meeting certain mandatory requirements set forth in the regulations.

1. *Program purposes.* Title I of the Elementary and Secondary Education Act, as amended, provides financial assistance to local educational agencies for programs to meet the special educational needs of educationally deprived children in low-income areas; to State agencies to meet the special educational needs of handicapped and neglected or delinquent children; and to State educational agencies for educational programs for migratory children of migratory agricultural workers or of migratory fishermen; and to such agencies for the administration throughout their respective States of financial assistance provided under Title I.

2. *Section 503 procedures and effect.* Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders with an opportunity for public hearing on the matters so published. The regulations below reflect the results of this study as it pertains to the program under Title I of the Elementary and Secondary Education Act, as amended. All preceding rules, regulations, guidelines, and other published interpretations and orders issued in connection with or affecting Part 116 will be superseded when this regulation becomes effective.

3. *Effect of Office of Education General Provisions Regulations.* General fiscal and administrative rules for the programs are covered under the overall Office of Education General Provisions Regulations, published in the FEDERAL REGISTER at 38 FR 30654 (November 6, 1973), and now set forth in 45 CFR Parts 100–100c, in connection with the same study under Section 503 of the Education Amendents of 1972 of which this publication is a part. (Reference is made in particular to the provisions of Part 100b of Title 45 CFR, containing general provisions for State administered programs, which would be applicable to the programs under Title I of the Elementary and Secondary Education Act, as amended.)

4. *Reorganization of Part 116.* Part 116 has been limited to those provisions that are applicable to all grantees, including State educational agencies in their administrative capacities, under Title I of the Act. Also, a number of provisions have been deleted and are now incorporated in the Commissioner's general regulations in Part 100b of Title 45. Each of the four new parts contains provisions which are applicable to grantees in one of the four categories specified in the legislation, as follows: 116a—Local educational agencies, 116b—State agencies directly responsible for providing free public education for handicapped children, 116c—State agencies directly responsible for providing free public education for children in institutions for neglected or delinquent children, and 116d—State educational agencies as applicants for grants for educational programs and projects for migratory children of migratory agricultural workers or of migratory fishermen. Under the proposed five-part organization of the regulations, a grantee agency would be able to refer to Part 116 and the appropriate part designated for such agency.

5. *Amendments made by Pub. L. 93–380.* The regulation set forth below reflects and implements amendments made to Title I of the Elementary and Secondary Education Act by Pub. L. 93–380, the Education Amendments of 1974. In particular, the regulation makes conforming changes in, or additions to, the current regulation relating to allocation of funds; participation of children enrolled in private schools; special grants (part C of Title I); comparability; parent advisory committees; designation of project areas; use of funds for training; and other matters affected by Pub. L. 93–380. (Changes in the regulation to conform to Pub. L. 93–380 with regard to State agency programs to meet the special educational needs of handicapped children; neglected or delinquent children; and migratory children of migratory agricultural workers or of migratory fishermen will be published separately as parts 116b, 116c, and 116d, respectively.)

6. *Citations of legal authority.* As reqired by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232 (a)) and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of the section.

On occasion, a citation appears at the end of a subdivision of the section. In that case the citation is to all that appears in that section between the citation and the next preceding citation. When the citation appears only at the end of the section, it applies to the entire section.

7. *Opportunity for public comment.* Pursuant to section 503(c) of the Education Amendments of 1972, the Commissioner provided interested parties an opportunity for a public hearing on the proposed regulations on April 10, 1975. The purpose of the hearing was to receive comments and suggestions on the published materials. Additionally, an opportunity was provided to submit written comments and suggestions. Written comments were received from officials in 26 States and 144 local educational agencies, representatives of eight organizations, and numerous individuals. Additionally, informal comments were received at three regional meetings for State administrators and at a national meeting for parents.

8. *Summary of comments and responses.* The following is a summary of pertinent comments relating to the language of the regulations and the responses setting forth changes which have been made in the regulations as a result of the comments, or the reason why no change is deemed necessary. Specific comments are arranged in order of the section of the regulation to which they pertain. Where the section number in the final regulations differs from that in the proposed rule, the proposed rule section number is also identified. Other changes made in the final regulations, not based on comments, appear after the comments and responses for each of the two parts.

PART 116

§ 116.2 *Definitions.* 1. *Comment.* Most of the comments on this section suggested changes to definitions that were taken directly from the statute.

Response. Although no changes could be made to these definitions as mandated by statute, to avoid further confusion, these definitions are now being incorporated by reference in § 116.2(b), rather than being restated or paraphrased. For the added convenience of the reader, the text of the Title I statute is included as an Appendix to the regulation.

2. *Comment.* A few commenters indicated a preference for a definition of "educationally deprived children" modelled on the definition of "educationally disadvantaged children" in section 417 (a)(2) of the General Education Provi-

sions Act (GEPA) which provides that for the purpose of the Secretary's Annual Report that term "* * * refers to children who are achieving one or more years behind the achievement expected at the appropriate grade level for such children."

Response. The requested change was not adopted. Although the definition in section 417(a)(2) of GEPA could have been adopted for use for children in regular school programs above grade 2, the below grade level standard it imposes would not have been suitable for the participation of preschool children, handicapped children, and children in institutions for neglected or delinquent children. Therefore, rather than having different standards for each type of child, the standard of "educational attainment . . . appropriate for children of their age . . . ," which has the widest applicability to children served by local educational agencies (LEA) under Title I, was maintained. Since the definition of "educationally deprived children" only applies to the local educational agency program, it has been transferred to § 116a.2 of the regulation.

§ 116.3 *Participation of States—Comment.* Several commenters on this section requested more specificity in the content of the annual program plan.

Response. Since there is no intent at this time to add regulatory requirements to those applicable in Section 142 of the Title I statute and Section 434 of GEPA and Parts 100 and 100b of this chapter, no further specifications were added.

§ 116.4 *State administration and technical assistance—Comment.* Three commenters raised questions concerning whether the unused amounts of a State's allocation for State administration at the end of the period of availability of funds could be used for program purposes.

Response. No change was made in the regulations. Such allocations are available only for the proper and efficient administration of programs under Title I. The statute makes no provision for the reallocation of these funds to other agencies. Therefore, unused amounts from such allocations revert to the U.S. Treasury.

§ 116.5 *Approval by the State educational agency of applications from applicant agencies.* (Proposed § 116.6)—1. *Comment.* With respect to proposed paragraph (b), "Notice and opportunity for hearing," one commenter asked that the regulations require the State educational agency to inform the local educational agency of the reasons for which an application has been disapproved.

Response. This paragraph, now designated as (c), has been revised to incorporate such a provision.

2. *Comment.* With respect to proposed paragraph (d), "Availability to the public," two commenters recommended that parties interested in reviewing documents related to a project be required to request such documents from the local educational agencies before requesting such documents from the State educational agency.

Response. This requested change was not adopted. It was believed to be in the best interests of the general public information requirements of Title I and GEPA to allow interested parties the greatest amount of flexibility to obtain relevant information. Such parties may choose, for reasons of their own, such as the time and expense involved or the nature of their request, to contact the State educational agency rather than local educational agencies (and other applicant agencies).

§ 116.6 *Review and complaint procedures.* (Part of proposed § 116.7(b))—*Comment.* In general, with respect to complaints, a few commenters stated that the complaint procedures were difficult to find as part of the section on "Reports by State educational agencies," and recommended that a new separate section on complaint procedures be added. Some of these commenters suggested that this new section contain requirements that the State educational agency set up complaint procedures and submit them to the Commissioner within 120 days of the publication of this final regulation. It was requested that such procedures include:

(a) Provision of a hearing within thirty days of the filing of the complaint;

(b) An opportunity for the complainant to review or comment on the report filed by the applicant agency before the final disposition of the complaint; and

(c) The written communication of the disposition of the complaint and the basis for such disposition to the complainant within ninety days of the filing of the complaint.

Response. A new separate section requiring the establishment of complaint procedures has been set up as recommended. However, it was believed to be unnecessary to require the State educational agency to submit the procedures to the Commissioner, and therefore, in the interests of not requiring additional submissions, this suggestion was not adopted. Additionally, rather than requiring that a hearing be provided to every complainant, the State educational agency is only required to give the complainant the opportunity to present evidence. It was believed that the State educational agency should be given some flexibility in determining the manner in which such evidence is to be presented. The State educational agency may, of course, decide that, in a particular case, a hearing is necessary.

§ 116.7 *Reports by State educational agencies.*—1. *Comment.* A few commenters on paragraph (a), "Annual evaluation reports," stated that, the forthcoming change in the dates of the fiscal year as set forth in Pub. L. 93-344, whereby a fiscal year will run from October 1 to September 30 rather than July 1 to June 30 (beginning with fiscal year 1977) may make it impossible to prepare evaluation reports by November 15.

Response. The section has been revised to indicate that the evaluation report, as always, covers the usual period of a Title I program, the period from the beginning of the preceding regular school term through the end of summer following that term and, therefore, is not affected by the change in fiscal year. Consequently, the new fiscal year will not change the reporting period for the State evaluations. It should be noted that, in accordance with Section 151(g) of the Act, the Commissioner is required, no later than January 31 of each year, to report the results of the evaluations of Title I programs to the Congress, and therefore, in order to meet this requirement, the Commissioner must have the reports of the State educational agency by November 15.

2. *Comment.* Several commenters suggested that the State reports concerning complaints as set forth in paragraph (b), which are submitted to the Commissioner, also be furnished automatically to the complainant and the local educational agency.

Response. These comments are reflected in the last subparagraph of § 116.7. It should also be noted that, in accordance with § 116.45, any member of the public may request such reports from the applicant agency.

3. *Comment.* A commenter suggested that the State educational agency furnish the Commissioner with copies of any formal reports by an applicant agency concerning a complaint.

Response. This suggestion was not adopted. The regulatory provision requires that the State educational agency submit a report to the Commissioner which gives a summary of results of the investigation of a complaint and any hearings held concerning the allegation, and a statement of the disposition of the matter, and the reasons for the disposition. It does not seem necessary for the Commissioner to carry out his or her responsibilities to require initially reports by an applicant agency in every complaint. Of course, if the State educational agency's report is not sufficient, the Commissioner may request further information, including the report of the applicant agency.

4. *Comment.* Several commenters indicated the need for well defined deadlines applying to the handling of complaints and submitting of reports to the Commissioner by the State educational agency.

Response. The report section now includes a requirement that if a complaint cannot be handled within sixty days from the filing of the complaint, an interim report should be filed by the State educational agency with the Commissioner, explaining the status of the matter.

§ 116.19 *Maintenance of effort—Comment.* Two commenters raised questions as to whether the maintenance of effort requirement applied to private schools.

Response. No change was made in the regulations. The expenditures of private schools enrolling children participating in the Title I program are not included in the requirement of § 116.19, because such expenditures are not part of the "combined fiscal effort * * * of that (local educational) agency and the State with respect to the provision of free public education by that agency * * *," (emphasis supplied) as set forth in Section 143(c)(2) of the Act.

§ 116.30 *Planning grants* (Proposed § 116.39)—*Comment.* A few commenters asked for clarification concerning the source of funds for planning grants.

Response. No change was made in the regulation. Any funds requested for a planning grant must be taken from the applicant agency's allocation. Planning expenditures are listed in Section 141(a)(1) of the Act as allowable expenditures along with other expenditures which come out of an applicant agency's Title I allocation. Additionally, the funds available for planning for any fiscal year which is set forth in Section 141(a)(1) of the Act, is limited by the size of the agency's allocation for that fiscal year.

§ 116.32 *Construction and equipment.* (Proposed § 116.38)—*Comment.* Several commenters wanted a more definitive treatment of the criteria to justify the use of Title I funds for construction or equipment.

Response. No change was adopted. Because of the varied nature of the projects, it would be difficult if not counterproductive to supply specific criteria. The first sentence of paragraph (a), contains a generally applicable standard that the acquisition of equipment and construction are allowable when such equipment or construction "is demonstrated as being essential to the success of a program or project under Title I of the Act." Any request for construction or equipment is an assertion by the applicant agency that the project cannot be accomplished with existing school facilities or equipment. Such a determination can be made initially on a case-by-case basis by the State educational agency which may request whatever information is necessary from the applicant agency to demonstrate that facilities other than those acquired with Title I funds are not available for use in its proposed project.

§ 116.33 *Reimbursement for expenses incurred by parent council members and volunteers.* (Proposed § 116.40)—1. *Comment.* Two commenters suggested that Title I funds be used to compensate council members or volunteers for loss of salary or wages.

Response. No change was made in the regulations. The general standards for allowable costs as set forth in Appendix B which applies to Title I through Part 100b of this chapter (see 45 CFR 100b.81), are that the costs "be necessary and reasonable" to the proper administration of the grant program. In only the most limited circumstances would the compensation of a council member be allowable as necessary to the operation of the council, and not subject to an audit exception. This matter would ultimately have to be judged on a case-by-case basis. The compensation of a volunteer is not consistent with the status of a volunteer.

2. *Comment.* Five commenters asked for clarification concerning the types of expenditures allowable under this section.

Response. No change was made in the regulations. Further specification in the regulations is considered inappropriate because it would be too restrictive to try to anticipate the numerous ways in which this question would arise. State educational agencies in reviewing project applications must determine on a case-by-case basis that the proposed activities for parent councils and volunteers are appropriate, likely to be effective, and are set forth in sufficient detail to determine whether the expenses incurred will be within the scope of the approved project. Guidance in general is provided in the cost principles contained in Appendix B to Part 100b of this chapter which states that the costs must be "necessary and reasonable for proper and efficient administration of the grant program."

§ 116.34 *Education aides* (Proposed § 116.32)—*Comment.* Some commenters wished to have the required training directed to the aides and not to the professional staff they assist.

Response. No change has been made in the regulations. This section is taken directly from the statute, section 141(a)(12), which requires joint participation of both aides and professional staff when a title I project includes aides. Both professional staff and education aides may, of course, also receive separate training in accordance with the provisions of § 116.36, "Training."

§ 116.36 *Training* (Proposed § 116.42)—*Comment.* Several commenters expressed concern that paragraph (b), "Supplementary training for specialists and classroom teachers," in the proposed § 116.42 might lead to widespread use of Title I funds for training that is not directly related to Title I programs.

Response. Appropriate changes have been made in the regulations to indicate more clearly that all training provided with Title I funds must directly relate to the Title I services provided to educationally deprived children and to the objectives of the Title I program serving such children.

§ 116.40 *Title I funds supplementary to State and local funds* (Proposed § 116.30)—1. *Comment.* One commenter pointed out that the reference in subparagraph (a)(1), "General," to a project area was inappropriate since the paragraph is applicable not only to local educational agencies that have project areas, but [illegible] State agencies that do not have such areas.

Response. The reference to project areas has been deleted.

2. *Comment.* Several commenters expressed concern about, or requested clarification of the term "ordinarily provided" as it was used in subparagraph (a)(2), particularly as it applied to State and locally funded compensatory programs.

Response. The clause containing this term was deleted. Since other provisions of the regulations clearly indicate that services generally provided for all children are not to be paid for from Title I funds there is no need for this clause. A similar provision has been inserted in § 116a.22(b)(10), and modified to address the issue of the use of Title I funds by local educational agencies when State and local funds are being used for purposes that are similar to those of Title I.

3. *Comment.* Several commenters disagreed with the prohibition in paragraph (b), "Services which applicant is required to provide," against using Title I funds to provide educational services in programs which are required by State law or by other Federal laws. The commenters felt that if Federal law or a court order required certain services, Title I funds ought to be made available to provide such services.

Response. No change was made. The prohibition in this paragraph, which is an application of the "supplement not supplant" concept, presumes that where the applicant is required by statutes or court order to provide certain services, such services would be provided in the absence of Title I funds. If a program mandated by State or Federal law receives sufficient State and local funding to meet the requirements of the appropriate law, then Title I money can be used to supplement the services available from such funding.

§ 116.41 *Relation of Title I projects to other programs.* (Proposed § 116.31)—*Comment.* Some commenters wanted a specific reference to community action agencies in paragraph (a) to make it clear that such agencies have an advisory role in reviewing an application.

Response. No change has been made. There is no basis in the statute for a regulation requiring a specific type of agency to be involved in the coordination and review process. Contrary to the assumptions made by several of these commenters, the statutory provision after which this section was modeled, section 803(c) of the Elementary and Secondary Education Act, does not require that any such agency have an advisory role in the development of Title I programs. Such agencies are, of course, considered to be among those which may be able to provide services that meet some of the needs of educationally deprived children and such agencies are among those whose review of the application would therefore be relevant. Each local educational agency is expected to avoid using Title I funds for services that could be supplied by another agency, including a community action agency.

§ 116.43 *Measurement of educational achievement and evaluation of programs.* (Proposed § 116.33)—*Comment.* Several commenters wanted to know whether the evaluation of educational achievement among private school children participating in a Title I program as set forth in paragraph (c) was the responsibility of the private school or the applicant agency.

Response. No further change was made in the regulations. The applicant agency as the grantee, must ensure that an evaluation of all projects serving Title I children, including those attending private schools, is conducted at least annually, consistent with Section 141(a)(6) of the Act.

§ 116.44 *Dissemination and utilization of results of educational research and demonstrations.* (Proposed § 116.34)—*Comment.* A few commenters suggested that this section, which provides for the dissemination of certain research information to teachers and administrators, be amended to include not only teachers and administrators but also parent council members in local educational agency programs.

Response. No change has been made in the regulation. This provision tracks the statutory provision in Section 141(a)(10) of the Act, which is written in general terms. It is expected that the specific training programs for local educational agency parent council members covered by § 116.36, "Training," would include the dissemination of appropriate research information. Additionally, such materials would be available to parent council members in local educational programs in accordance with § 116a.25(g).

§ 116.45 *Public information.* (Proposed § 116.35)—*Comment.* Five commenters wanted clarification on how long a local educational agency is required to keep information on Title I programs.

Response. To address these comments, a new sentence has been added to the regulations to specify that such information must be made available for five years after the completion of a Title I program or project or, in the case of an audit, until the resolution of such audit in accordance with Section 434(a) of the General Education Provisions Act.

OTHER CHANGES IN PART 116

1. Several typographical and technical corrections have been made and certain sections have been reorganized or renumbered.

2. A definition of "child or children" has been added to § 116.2(a) to conform to program administration.

3. A definition of "applicant agency" has been added in § 116.2 to simplify references to grantee agencies in Part 116.

4. Definitions in § 116.2 which were taken from the statute, have been eliminated and replaced by a cross reference to the statutory provisions. It should be noted that the text of the statute is attached.

5. In § 116.3(a), the assurances to be provided in the Annual Program Plan have been deleted and replaced by a cross reference to the statutory provisions.

6. In § 116.4(b), the specific amount of administrative funds has been deleted, and the statutory provision incorporated by reference.

7. A new paragraph (b) has been added to incorporate language in previous Title I regulations (before the publication of the General Provisions Regulations in Part 100 of the Chapter), which makes the effective date of an appplication the date on which the State educational agencies receives it in substantially approvable form. This provision inadvertently removed from the Title I regulations, is consistent with the general rule for effective dates in § 100b.35 of this Chapter.

8. Section 116.5(c) [illegible] irement that the notice of a decis[illegible] from the review of an application given the applicant agency by the State educational agency, include the reasons for the proposed disapproval, in accordance with Section 425 of General Education Provisions Act.

9. The second sentence of § 116.7(a), concerning the content of State evaluation reports, was deleted pending the results of a study on uniform State evaluation models which is now being conducted by the Office of Education in accordance with Section 151(d) of the Act. Until the results of the studies are available, it is suggested that the evaluations include information on the types of educational and supportive services provided, parental involvement, the participation of public and private school children, the number and categories of staff employed, the nature and extent of the inservice training provided, a summary of the results of objective measurements of changes in the educational attainment of educationally deprived children who participated in programs and projects, and the results of research and replication studies conducted in the State pertaining to programs for educationally deprived children.

10. The last phrase of § 116.18, prohibiting Title I funds from being considered in the determination of State aid, has been reworded to clarify that Title I funds cannot be considered in such a way as to penalize an applicant agency in the amount of State aid it receives. This change would permit applicant agencies to be eligible for and receive additional State funds on the basis of their Title I eligibility.

11. A new paragraph (e) in § 116.19 clarifies the effect of the maintenance of effort provision on an applicant agency which derives ninety-five percent or more of its funds for education from Federal sources. Such agency will not be required to show maintenance of effort of State and local funds under this section.

12. Section 116.41(c) emphasizes that funds currently available through State and local categorical programs which are appropriate for funding components of the Title I programs must be utilized, rather than Title I funds.

13. Consistent with Section 141(b) of the Act, a new § 116.47, "Individualized educational plans" (formerly § 116a.22), has been added to Part 116 to apply to all Title I programs.

14. A new § 116.48, "Operational responsibilities" clarifes that the approval of an application does not relieve the applicant agency of the responsibility to carry out the Title I program in accordance with statutory and regulatory requirements.

PART 116a

§ 116a.1 *Applicability — Comment.* Commenters on paragraph (a), "Regulations for local educational agencies," suggested that it be reworded in line with the statutory requirement that Title I programs and projects be provided for educationally deprived children in school attendance areas with high concentrations of children from low-income families.

Response. This recommended change was adopted and the statutory language is being utilized.

§ 116a.5 *Allocation of county aggregate grants by State educational agencies*—1. *Comment.* Three commenters raised questions whether local educational agencies are required to provide Title I services for children in local institutions for neglected or delinquent children.

Response. The last sentence of paragraph (b) has been clarified to indicate that if a local educational agency receives an allocation based partially or wholly on the number of such children in accordance with Section 103(c)(1)(C) of the Act, then Title I services must be provided for them. If an approvable Title I program is not provided for such children by the local educational agency receiving the allocation based on such children, the State educational agency shall either assume the responsibility or find another agency to provide the services using that portion of the grant that was based on the number of such children, as is specified in Section 103(a)(3)(A) of the Act. If such services are not provided, then the funds attributable to such children are not available for other purposes and revert to the U.S. Treasury.

2. *Comment.* Commenters noted that the 1970 census data do not reflect the most current distribution of children from low-income families for the purposes of subcounty allocations, and that modifications should be made accordingly.

Response. Appropriate changes have been made. Paragraph (c), "Allocation of remainder of county grant," has been reworded to permit, but not require, the State educational agency to choose data other than the 1970 census, as the current data, as long as it is consistent with the purposes of Title I of the Act and approved by the Commissioner. The paragraph also now indicates the types of data considered acceptable.

§ 116a.10 *Further assistance to certain local educational agencies—Comment.* The commenters on this section were of the opinion that it departed from the intent of the statute (Section 101(a)(10) of Pub. L. 93-380), which is to raise the allocations of those local educational agencies which were held down to or raised to 85 percent of their previous year's allocations.

Response. This section has been revised to indicate that all such agencies would have their allocations raised to 90 percent of their previous year's funding. It should be noted that implementation of this section requires a separate Congressional appropriation.

116a.19 *Project applications—Comment.* Comments on this section were directed at the provision for the participation of children residing outside the project area with recommendations that it be deleted, because the need for Title I services within areas designated for projects is so great that the provision is unnecessary and counterproductive.

Response. This provision has been deleted. However, the authorization to serve educationally deprived children who reside outside of a project area has been rewritten for added clarity and is included in § 116a 22(b) (9), "Project description, size, scope, and quality." The added criteria in this provision are to further ensure that such children can only be included when their participation does not impair the effectiveness of the project for eligible children residing in the project areas, nor increase the cost of the project. It should be remembered that, even if the inclusion of children residing outside of the project areas meets these criteria, the local educational agency has the discretion to not serve such children.

§ 116a 20 *Selection of Title I attendance areas*—1. *Comment.* A number of commenters questioned the continuation of the requirement that Title I projects be located in areas with above-average concentrations of children from low-income families, suggesting that it be deleted.

Response. This requirement has been retained. Section 141(a)(1)(A) of the Act states that Title I funds be used for programs which are designed to meet the needs of "educationally deprived children in school attendance areas having high concentrations of children from low-income families." The regulatory requirement questioned is a reasonable interpretation of "high concentrations." Administrative experience indicates that such a requirement is a necessary one. Congress, in the legislative history to the Education Amendments of 1969 (Pub. L. 91-230) (Sen. Rept. No. 91-634, p. 9 (1970)), recognized that the selection and the use of Title I funds in proper project areas was an issue in which special Federal guidance and supervision was needed.

2. *Comment.* (a) Several commenters noted the change in paragraph (b)(2), "Eligibility of attendance areas," which designates project areas as school attendance areas in which 30 percent of the children are from low-income families. Some of those commenters said the provision should be deleted, since it gives the local educational agencies too much discretion.

(b) Others asked that the determination of the number of children from low-income families for this purpose be made on the basis of a more current criterion of poverty than that used in the latest Decennial Census.

Response. (a) The "30 percent" rule has been retained. This provision is consistent with the legislative history expressed in the House Report for the Education Amendments of 1974 (Pub. L. 93-380) (see House Rept. No. 93-805, pp. 16-17 (1974)) and in the legislative history to the Elementary and Secondary Education Amendments of 1966 (Pub. L. 89-750) (see House Rept. No. 1814, p. 3 (1966)).

(b) A new sentence has been added to the end of § 116a.20(b)(2) requiring that a determination of 30 percent incidence of poverty be made on the basis of data showing the eligibility of children to receive free lunches under the National School Lunch Act. School lunch data are the most current and most accessible data available for application to this provision.

3. *Comment.* Many commenters requested the addition of a specific provision for determining the eligibility of attendance areas on the basis of separate averages and separate rankings for elementary, middle or junior high, and high schools. For example, a local educational agency with one high school or an agency with several overlapping attendance areas for different grade spans could be prevented from providing Title I services to the children it considered most in need if only one district-wide average were used.

Response. Appropriate provisions have been added in a new subparagraph (b)(5) so that local educational agencies have greater discretion to select areas with high concentrations of children from low-income families and may, at their option, use separate averages and separate rankings by grade span in the selection of areas for projects.

4. *Comment.* A few commenters stated they considered the provision in paragraph (d), "Districts with no wide variance in the incidence of poverty," for determining whether a district has "no wide variance" in the number of children from low-income families (so a district-wide program could be conducted) to be too strict. The commenters recommended that the permissible variance based on one-third of the district-wide percentage be increased to one-half of that percentage, or that such variance be a fixed percentage regardless of the district-wide average. Several commenters approved of the one-third standard and requested that it be maintained.

Response. No change has been made in the regulations. The legislative history of Pub. L. 89-10, the Elementary and Secondary Education Act of 1965, which established Title I, indicated that only in limited circumstances may a whole school district be considered eligible as a "low-income area." (See Sen. Rept. No. 146, p. 9 (1965).) A further broadening of the "no-wide variance" standard would be inconsistent with this history, and with the requirement in Section 141 (a)(1) that the areas selected have "high concentrations of children from low-income families."

§ 116a.21 *Needs assessment*—1. *Comment.* Of the many commenters on this section, several stated that a comprehensive needs assessment every year in accordance with paragraph (c) is unnecessary. Conversely, other commenters asked that the section on needs assessment be expanded to give more guidance on the information and analysis of the data necessary for an adequate needs assessment.

Response. As a result of these comments, this section has been extensively revised to give greater clarity on information to be gathered, and steps to be undertaken to use this data. Paragraphs on "Diagnostic Procedures" and "Consultation" have been added. Where feasible, the use of existing data is authorized, to ease the annual data-gathering burden on the local educational agencies. However, since eligible attendance areas may change every year, and annual evaluations required by the statute must be examined to make appropriate changes to the project, some data will probably need to be collected every year.

2. *Comment.* Some commenters felt that the emphasis on reading and mathematics was too restrictive and should be eliminated, while others felt it to be justified and suggested it be kept.

Response. Because of the disparity of viewpoints expressed, this emphasis has been altered in paragraph (a) to allow the local educational agencies more flexibility in performing their needs assessments. The provision in question is written in terms of giving emphasis to "the agency's basic programs of instruction."

3. *Comment.* Some commenters expressed the need for a requirement for objective needs measurement and the listing of specifications for such measures.

Response. No change was made in the regulations. Because of the disparity of viewpoints in this field, this area was felt better left to the expertise of the particular local educational agencies. The publication of guidelines on this subject in the FEDERAL REGISTER is being considered.

Whether or not a particular needs assessment is adequate to determine the needs for a particular project must be made on a case-by-case basis.

4. *Comment.* Several commenters felt that the term "dropout" was ambiguous and should be replaced by words which would more effectively refer to school age children not receiving an education.

Response. An appropriate change was made in paragraph (a) to include "children of school age not enrolled in a school."

5. *Comment.* Several commenters asked for a clarification of the requirement in the proposed § 116a.22(b) that only educationally deprived children be served who have the greatest need. These commenters suggested that a provision be added to give local educational agencies the discretion to also serve children residing in a project area who were served in the Title I project in the previous year who had made educational gains, and were no longer the children with the greatest need but who were still performing below the level appropriate for their age level.

Response. An appropriate addition was made in § 116a.21(e) to give local educational agencies the discretion to serve such children.

§ 116a 22 *Project description, size, scope, and quality.* 1. *Comment.* Some general comments submitted on § 116a.22 indicated that former paragraphs (b), "Children to be served," and (c)(1), "Needs to be served," should be clarified as they relate to each other and to § 116a.21, "Needs assessment."

Response. Accordingly, § 116a 22 has been rewritten to be more internally consistent and to provide a clearer indication of the relationship of Title I services to the educational needs of children identified in § 116a.21. Paragraph (a), "Project description," brings together requirements previously scattered throughout § 116a.22, which indicate what information should be in a local educational agency's project application. Paragraph (b) sets forth the standards by which the State educational agency will examine this data.

2. *Comment.* Several commenters protested the inclusion of proposed subparagraph (c)(2) which would make it clear that Title I services may be offered in the presence of non-participating children. These commenters objected that this subparagraph might be interpreted as allowing the use of Title I funds for the general aid of the school.

Response. A revision has been adopted in subparagraph (b)(8) to make it clear that, while Title I services may be provided for identified children in their regular classrooms or in other similar settings with other children present, Title I services must be directed only to the selected Title I eligible children.

3. *Comment.* A recommendation was made that in the proposed paragraph (d), "Size, scope, and quality," a reference to prior program evaluations be included as a basis for determining size, scope, and quality of the proposed programs.

Response. No change was made to this section. Prior program evaluations are to be taken into account in the needs assessment as specified by § 116a.21(a), and, therefore, are a part of the project design. These evaluations may also be used in determining the appropriate size, scope, and quality of the project, but it is left to the discretion of local educational agencies and State educational agencies as to whether it is actually to be used in the manner suggested.

4. *Comment.* A number of commenters objected to the last sentence of the proposed paragraph (d) requiring a justification for any Title I expenditures above the level normally expended by the local educational agency for any "comparable activities." They objected on the grounds that Title I funds are not to be used in any event for "comparable activities," which are paid for by State and local funds.

Response. The sentence has been deleted. It was intended to ensure that the levels of expenditure for personnel or materials for Title I activities are comparable to expenditures made by the local educational agency from State and local funds. However, its purpose is also covered by the preceding sentence concerning extravagant or imprudent expenditures, and the "supplement, not supplant" requirements of § 116.40.

§ 116a.23 *Participation by children enrolled in private schools.* 1. *Comment.* Two commenters were opposed to providing any services to non-public school children.

Response. No change was made in the regulation. This provision is derived directly from Sections 141(a)(2) and 141A of Title I.

2. *Comment.* Two commenters suggested that a precise definition of private schools be added to the Title I regulations.

Response. No such addition has been made. Any private elementary and secondary school as defined in Section 100.1 of this Chapter may be considered to be a private school for Title I purposes.

3. *Comment.* A high proportion of commenters on this section stated that the words "* * * therapeutic, remedial, or welfare services, health services, school breakfast for poor children and guidance counseling services * * *" used in paragraph (f), "Limitations on availability of services in other than public school facilities," may be misleading and in conflict with the requirements of the sections on "Needs assessment" and "Project design" because they place an undue emphasis on non-instructional services.

Response. No changes have been made. These illustrations are taken from the passages of the legislative history of Pub. L. 89-10 (Sen. Rept. No. 146, p. 12 (1965)), which form the basis for the provisions in question.

4. *Comment.* Many of the same commenters referred to in item 3 above also objected, for similar reasons, to the use of the words "dual enrollment, educational radio and television, and mobile educational services and equipment," in paragraph (a), "General requirements."

Response. These words are found in Section 141A(a) of the Act and have been retained.

5. *Comment.* Many commenters found the phrase in paragraph (a) "* * * a geographical area reasonably coterminous with the project area," to ambiguous and requested that it be clarified or deleted.

Response. The phrase has been deleted from the regulations. It was intended to apply primarily to Title I programs being conducted at private schools which serve children, nearly all of whom are from the project areas but with a few children residing just outside the project area, but the words "a geographical area, reasonably coterminous" were difficult to apply. Paragraph (9) of § 116a.22(b), "Size, scope, and quality," however, does provide for the participation of educationally deprived children not residing in eligible attendance areas, if such participation meets certain requirements including that it does not impair the effectiveness of the program for the participating children from the project areas for whom the project was designed.

6. *Comment.* Two commenters wanted paragraph (b) to provide that the local educational agency consult with official designees of private schools, rather than "persons knowledgeable" of the needs of private schools in making a determination of the special educational needs of private school children.

Response. No change was made in the regulations. The local educational agency is the grantee and is required by Section 141(a)(3) of the Act to maintain public supervision and control, and it was believed appropriate to give it flexibility to determine the appropriate persons to consult who are knowledgeable of the needs for Title I services by eligible private school children.

7. *Comment.* Two commenters requested that paragraph (d) be changed so that the local educational agency would be permitted to provide an assurance, rather than specific information, that it had conducted a needs assessment for private school children.

Response. No change was made to reflect this comment. The statute in Section 141(a) requires that Title I services be designed to meet the special educational needs of educationally deprived children in eligible areas, whether they be enrolled in public or private schools. To determine this, a needs assessment must be conducted for all such children and sufficient information put in a local educational agency's application to enable the State agency to determine that an adequate needs assessment was undertaken. To meet the requirement of "participation on an equitable basis for eligible private school children" in accordance with Section 141A of the Act, an equitable needs assessment and similar data would have to be presented for private school children as well as public school children and other types of children as indicated in § 116a.21(a).

8. *Comment.* Several commenters stated that the regulations should require that instruction in the basic skills be provided to private school children selected to participate in the project.

Response. Paragraph (d), "Design of projects," in § 116a.23 has been revised to incorporate by reference the requirements of § 116a.21 concerning needs assessment which requires in paragraph (a) that data on performance in the basic programs of instruction be considered for all children.

§ 116a.23–1 *Participation by children enrolled in private schools*—1. *Comment.* Several commenters noted the use of the term "equitable basis" in paragraph (c) and asked that it be amplified.

Response. No change was made in the regulations. The term is taken from Section 141A(b)(2) which speaks of a local educational agency that "* * * has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools * * *" General guidance for determining whether this provision is met is given in paragraphs (a), (b), and (c) of § 116a.23. As set forth in paragraph (c) of that section, a child enrolled in a private school who is selected to participate in a Title I program because of his or her special educational needs must receive Title I services that are "comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equally high priority." Beyond this, delineation of the standard is properly left to case by case determination.

2. *Comment.* A few commenters asked whether a State educational agency's entitlement to funds for the administration of the Title I program in its State under Section 143(b) of the Act would be decreased in the event that the Commissioner of Education withdrew a portion of the allocation for local educational agencies for the purposes of pro-

viding services for private school children in accordance with Section 141A of the Act.

Response. A clarifying statement has been added to § 116a.23-1(d) which indicates that a proportionate amount of State administrative funds may be deducted for this purpose except that no State may receive less than $150,000 in accordance with Section 143(b) of Title I. Section 141A(b)(3) provides that the arrangements necessary may be paid "from the appropriate allocation or allocations." Additionally, since Section 143(b)(1) of Title I requires the allocation to State educational agencies of "* * * 1 per centum of the amount allocated to the State and its local educational agencies," the withdrawal by the Commissioner of a portion of the allocations to one or more local educational agencies in a State would result in the reduction of the State's allocation under that section and a reduction in its administrative responsibilities.

3. *Comment.* Two commenters asked for clarification as to whether the State educational agency could have the authority to review any contracts the Commissioner may enter into as a result of exercising the by-pass provisions.

Response. While no change has been made in the regulations, it should be noted that, as stated in Section 141A(b)(3) of the Act, "When the Commissioner arranges for services pursuant to this section, he shall, after consultation with appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under this title." Officials of the State educational agency would be considered among the "appropriate public school officials" for this purpose.

§ 116.25 *Parent advisory councils*—1. *Comment.* A large number of commenters were opposed to the establishment of parent advisory councils at the school level, or were opposed to school advisory councils for small school districts or for schools receiving small Title I grants. The suggested definitions of a small grant ranged from $10,000 to $100,000 and the suggested levels for small school districts ranged from 3,000 to 10,000 enrolled students.

Response. No change has been made as a result of these comments. The requirement that there be councils at every school served is stated in Section 141(a)(14) of the Act. The regulations permit a local educational agency with less than 1,000 children enrolled in all project schools to have the district/advisory council also serve as the council for each of its schools.

2. *Comment.* Three commenters suggested that the regulations mandate State parent advisory councils.

Response. Unlike other Federal programs in elementary and secondary education, there is no requirement in Title I of the Act for a State advisory council. Moreover, the nature of the Title I program is such that it would not be appropriate to require State advisory councils in order to increase the effectiveness of local programs. A State educational agency, is free to form a State parent advisory council if it finds such a council would increase the effectiveness of its administration of the Title I program.

3. *Comment.* One commenter wanted the State educational agency, in conjunction with appropriate consumer groups, to develop a specific list of required activities to be carried out by each parent advisory council.

Response. No change was made in the regulations. Paragraph (g), "Involvement of councils," already gives guidance as to the type of activities in which parent councils are to be engaged, consistent with Section 141(a)(14)(C) of the Act. In addition, paragraph (h), "Additional rules and procedures," permits the State educational agency to issue additional rules and procedures, not inconsistent with the regulations, which may be necessary to ensure the proper functioning of the parent councils. However, it is left to the discretion of the State agency as to whether such additional rules and procedures are adopted.

4. *Comment.* Eleven commenters wanted the regulations to restrict participation in selection of parent advisory council members to only those parents whose children were eligible to receive Title I services in a particular attendance area.

Response. No change has been made in the regulations. The current regulations regarding selection are taken directly from Section 141(a)(14)(B) of the Act which states that parent advisory council members must be "selected by the parents in each school attendance area." To further restrict the selection process would be inconsistent with Section 421(c)(2)(B) of the General Education Provisions Act.

5. *Comment.* Many commenters were concerned about the powers and authority of the parent advisory councils. Some commenters wanted the councils to have a "sign off" authority on the local educational agency's application. Other commenters strongly urged that the councils not be given such a "sign off" responsibility.

Response. No change has been made in the regulations. In accordance with Section 141(a)(14)(C), the councils have only an advisory function; they do not have the power to prevent the submission of an application by refusing to "sign off." However, since Section 141(a)(14)(C) of the Act requires the local educational agency to give the parent councils in its district "responsibility for advising it in the planning for, and the implementation and evaluation of * * * programs and projects," the local educational agency must insure that it has the advice of its councils on the application and on major decisions affecting the operation of such programs and projects.

6. *Comment.* Six commenters were concerned about the length of time for which the local educational agency is responsible for furnishing prior applications and evaluations of Title I projects. The commenters felt that the local educational agency should not be required to furnish all past applications and evaluations, some of which are ten years old.

Response. A reference to the availability of information requirements in § 116.45 has been added to subparagraph (g)(2) to indicate that such information has to be kept available for only 5 years after the completion of the relevant Title I project or until an impending audit has been completed and resolved.

7. *Comment.* Another commenter felt that the requirement to provide the advisory councils with relevant information and documents was already accomplished in proposed § 116.35, "Public information," and should not be repeated in § 116a.25.

Response. Paragraph (g) containing the requirements for the provision of information to councils has been streamlined and replaced by more general standards and a cross-reference to the "Public information" paragraph in § 116.45. However, because of the unique and important role of councils, the council members must be automatically furnished with certain specified documents, such as copies of the complete Title I statute and regulations, and the council must be furnished with the local educational agency's current application.

8. *Comment.* Several commenters wanted each council member to receive relevant information and documents rather than each advisory council, and recommended that paragraph (g) be revised accordingly.

Response. Subparagraph (g)(1) has been revised to indicate that several important documents must be provided to each council member. In order to assure effective participation by all the council members, each member will receive a copy of Title I of the Act, and the Federal and State regulations and guidelines. Copies of the other appropriate materials, such as the project application and periodic reports, which are issued frequently and tend to be lengthy, are to be furnished to each advisory council rather than each member.

9. *Comment.* Several commenters urged that parents employed by the local educational agency not be counted as part of the majority that are required to be parents of children to be served and that the regulations be amended accordingly.

Response. No change was made in the regulations. At this time, it is felt that this type of provision is best left to local discretion.

10. *Comment.* Four commenters were concerned about releasing the names of Title I parents for the purpose of having such parents considered for selection to parent councils. The commenters felt strongly that the confidentiality of the parents' names had to be maintained until and unless an individual parent consented to be identified.

Response. While this safeguard was already specified in the proposed paragraph (c), a new sentence was added in paragraph (c) to emphasize the principle of confidentiality with respect to parents eligible to serve on advisory councils.

11. *Comment.* Two commenters sought clarification as to the exact date when the local educational agencies

would be required to establish school advisory councils.

Response. No change was made in the regulations. Pub. L. 93-380, which requires school advisory councils, was enacted on August 21, 1974, and the requirement to establish school advisory councils was effective sixty days after the enactment (see Section 2(c) of Pub. L. 93-380). The local educational agencies were required, therefore, to form school advisory councils as soon as possible after the effective date.

12. *Comment.* Three commenters wanted the local educational agency to provide an assurance in its application that it was in compliance with the provisions of paragraphs (a) and (g) establishing parent councils rather than demonstrate in the application that it was in compliance with such provisions.

Response. No change was made in the regulations. By statute, the State educational agency is required to make a determination that the local educational agency has established parent councils in accordance with Section 141(a)(14) of the Act and, therefore, would need a brief description of the formation and operation of those councils.

13. *Comment.* Several commenters indicated some difficulty in interpreting the language used in subparagraph (a)(1) which referred to the majority membership of the parents of children "who participated in the program in the preceding year or will participate in the current year's program."

Response. This language has been clarified to indicate that parents of children who are participating in Title I during the current project year or who will be participating in the proposed program for the following project year (if determinable) must constitute the majority membership of the advisory council.

14. *Comment.* Several commenters suggested that paragraph (d) contain more specific methods of selecting parent advisory council members. These suggestions included: the selection of nonparent members by the parent members, the selection of all members by parents and staff in eligible schools, the required selection of district advisory council members from the membership of the school advisory councils, and the selection of parent advisory council members by an existing parent organization.

Response. No change has been made in the regulations. The proposed regulations were written both to conform with the specific requirements of the statute and to provide maximum flexibility for the State and local educational agencies to encourage parent involvement. The method of selection, therefore, is left to the discretion of the local educational agency (in consultation with the district advisory council) as to what it deems to be the most effective method of encouraging parent involvement, as long as such methods do not preclude or discourage participation by all parents in a project area in the selection of council members.

15. *Comment.* One commenter requested funds in addition to the existing Title I allocation to local educational agencies, to help maintain school parent advisory councils.

Response. No change was made in the regulations. The Commissioner does not have the authority to authorize a further appropriation without Congressional action.

16. *Comment.* One commenter wanted the regulations to require the State educational agency to provide staff to help the planning and coordination.

Response. No changes have been made in the regulations. Under Section 143(b) of the Act, the State educational agency is responsible for ensuring proper and efficient administration of the Act and under, such authority, may provide any technical assistance it deems necessary to local educational agencies to ensure the proper functioning of parent advisory councils. Moreover, local educational agencies under Section 141(a)(14) are considered to have the prime responsibility for the training of their advisory councils.

17. *Comment.* One commenter was concerned that compliance with proposed paragraph (d) to inform the general public of the time, place, and method of selecting council members would require enormous amounts of time and paper work.

Response. No change has been made in the regulations. Flexibility is given in determining the appropriate form of notice. It should be noted that notice to the public through conventional means of communication, such as local newspaper and media announcements would generally be satisfactory.

18. *Comment.* One commenter, in referring to proposed subparagraph (g)(6) which required a local educational agency to have adequate procedures for responding to parent complaints and suggestions, urged that all complaints be in written form and that no responses to complaints were needed. In addition, the commenter felt this requirement was an attempt by the Federal government to dictate local administrative practices.

Response. Subparagraph (g)(6), as proposed, has been deleted and relevant complaint procedures are now included in § 116.6. In order for the State educational agencies and the Commissioner to carry out their mutual administrative responsibilities, certain minimum standards of dealing with complaints are maintained.

§ 116a.26 *Comparability of services*—1. *Comment.* Several commenters stated that the date, October 1, which the Commissioner designated for determinations of comparability in Fiscal Years 1974 and 1975 was either too early for enrollments to be stabilized, or it failed to coincide with dates or periods established by the State for reports which include data related to comparability.

Response. The revised regulations in paragraph (c) enable each State educational agency to establish the date or reporting period for comparability purposes, not later than November 1, that best coincides with the date or period for State reports. To that extent, the State educational agency may take into account the stability of enrollments in setting the reporting date.

2. *Comment.* Several commenters urged that the averages for the comparability indicators from all of the Title I schools rather than each Title I school in a particular grade span be compared to the corresponding averages for all non-Title I schools.

Response. No change has been made in the regulations. In light of the legislative history (see particularly the Congressional debates in Cong. Rec. S. 4381, H. 2690 and H. 2692, daily eds. March 24, 1970, and April 7, 1970), this interpretation of the statute (Section 141(a)(3)(C)) was rejected. Such an interpretation would permit Title I services to be provided at schools that were grossly underfunded, provided there were compensating expenditures from State and local funds in other project area schools.

3. *Comment.* Several commenters indicated that the proposed rules did not recognize sufficiently the effect of school size on staff ratios and expenditures per pupil.

Response. Subparagraph (l)(4) has been added to allow a local educational agency to divide a grade span group into two size groups if a school in the grade span group has an enrollment that is at least two times that of another such school (The latter school must have an enrollment of over 100 students)

4. *Comment.* With respect to schools with enrollments of 100 or less, some commenters pointed out that schools with enrollments of five or ten children should not be compared with schools with enrollments of 90–100 children.

Response. Paragraph (k) has been revised to allow a local educational agency to file a statement of policies assuring comparability of the allocation of resources to schools having under 100 enrollment, rather than meeting comparability through a report as set forth in paragraph (b).

5. *Comment.* A number of commenters asked that the permissible variance of five percent from the comparability ratios (children per staff member and expenditures for instructional salaries less payments for length of service) based on the average of non-Title I schools be increased. Some of those commenters indicated that they are making such requests because of wide ranges in the sizes of the schools in their communities.

Response. While no changes were made in the permissible variance, the new division of schools by size detailed in the response to comment 3 of this section should, to some degree, serve to meet the objectives of those who wanted a change in the variance. It should be noted that the five percent variance is consistent with the decision in the relevant case of *Hobson* v *Hansen* 269 F. Supp. 401 (D.C.D.C. 1967); *aff'd. sub. nom.*, *Smuck* v *Hansen* 132 U.S. App. D.C., 372, 408 F. 2d. 175 (1969).

6. *Comment.* The provisions for reports on expenditure for materials and supplies contained in the proposed subparagraph (b)(7) were characterised by some commenters as "punitive," because

such reports have been required only of those local educational agencies which initially fail to demonstrate comparability. They also related their experience that such data are difficult to collect and maintain and, therefore, recommended that this requirement be deleted.

Response. This subparagraph has been deleted. However, subparagraph (h)(3) has been revised to include a statement of policy ensuring that the materials and supplies are distributed in a comparable manner. Because of the legislative history (see Sen. Rept. No. 91–634 pp. 14–15 (1970)), information concerning materials and supplies is a relevant part of the comparability requirements.

7. *Comment.* A few commenters recommended that a single measure of the comparability of services be adopted. Some of the commenters suggested the measure be the ratio of children enrolled to instructional staff. Still others suggested expenditures (for instructional salaries) per pupil. In both cases the commenters reasoned that a demonstration of an equitable preliminary allocation of resources, either in numbers of instructional staff or expenditures per child for instructional salaries, should be sufficient to determine that comparable services are being provided for project area schools.

Response. The regulation in this regard has been retained. The multiple standards are consistent with the legislative history (see Sen. Rept. No. 91–634, pp. 14–15 (1970)). Additionally, while a plan for allocating staff or funds among the schools of a local educational agency is important and perhaps a necessary management device, it is the actual delivery of these resources to individual schools that must form the basis for determinations of comparability.

8. *Comment.* One commenter suggested that only teachers, and not principals, librarians, and special instructional personnel be counted for the purposes of comparability since the last three categories of staff are frequently assigned on a school basis rather than on the basis of the number of children, a condition that frequently leads to adverse comparability determinations when project area schools are compared with nonproject area schools with considerably smaller enrollments.

Response. The size of school problem noted by this commenter has been taken care of by the addition of subparagraph (l)([illegible]), as noted in response to comment 3 of this section. However, the categories of principals, librarians, and special instructional personnel have been maintained as relevant for comparability purposes since the Congressional debates on the subject indicate that Congress wanted information on a broader category of staff than merely classroom teachers (see the debates as cited in the response to comment 2 above). It is also felt that principals, librarians, and special instructional personnel do affect the quality of instructional services offered to students in Title I and non-Title I schools, and therefore, are relevant to comparability determinations.

9. *Comment.* Another commenter suggested that, for comparability purposes, certain staff members, particularly teacher aides, be counted at a fraction of their actual number. This commenter also expressed the need to permit different combinations of professional and paraprofessional staff without jeopardizing the comparability of some Title I schools.

Response. No change was made in the regulations. While the concern for allowing flexibility of staffing patterns for various schools is understandable, there is no recognized standard for converting a certain number of aides to an equivalent number of teachers. To some degree, this concern is met by the fact that levels of preparation are reflected in the expenditure per pupil (salaries less longevity).

10. *Comment.* A number of commenters questioned the need for the inclusion of data on expenditures for instructional staff based on length of service (longevity) as required by proposed subparagraph (b)(3), and on children, instructional staff, and expenditures for such staff as required by proposed subparagraph (b)(8) with respect to State and locally funded special or compensatory programs. Their comments were based on the fact that such data are not actually required for determinations of comparability.

Response. The proposed subparagraph (b)(3) has been deleted. Proposed subparagraph (b)(8) has been kept so that it may be used in assessing the effect of such exclusions on determinations of comparability.

11. *Comment.* A group of commenters from one State requested that recognition be given to the provisions of their State's financial aid plan which requires a high degree of equalization with respect to funding not only on an interdistrict basis but also on a school by school basis. The same State's formula for determining equalization also includes the use of various weighting factors for different types of children and for children at different grade levels.

Response. In light of these comments, changes were made in subparagraph (b)(1), to permit the weighting of actual enrollments in accordance with the weightings indicated by State or local school finance plans provided such weightings are reasonable and uniformly applied.

12. *Comment.* A few commenters asked whether the provisions concerning revised comparability reports required that all data on such a report be as of the same date.

Response. Additional language has been supplied in subparagraph (f)(1) to make it clear that revised comparability reports must contain data as of one date, the date that the reallocation of resources actually takes effect.

13. *Comment.* One commenter recommended that a resolution of the board of the local educational agency be accepted as the evidence of the reallocation of personnel that is required when submitting a revised report and that an appropriate change be made to the regulations.

Response. No such change was made in the regulations. Comparability is measured in terms of the status of services at points in time. Comparability based on intention is an incomplete measure of actual services at any one point in time; a resolution showing intent to provide comparable services is not a measure of the actual services.

14. *Comment.* A few commenters objected to the requirement that State and locally funded services for handicapped children or for bilingual programs for children with limited English-speaking ability must be provided in project areas on a basis comparable to that for nonproject areas if expenditures for such services are excluded from a determination of average per pupil expenditure. They suggested that this requirement in proposed paragraph (j) be deleted.

Response. No change has been made in the regulations. This "comparability type" requirement appears in the definition of "excess costs" in the statute (Section 403(17) of Pub. L. 81–874) and is applied to the comparability requirements of Section 141(a)(3)(C) on the basis of the legislative history (See House Rep. No. 93–805, pp. 17–18 (1974); and Sen. Rept. No. 93–1026, p. 147 (1974)).

15. *Comment.* Another commenter on the provisions for the exclusion of State and local funds for handicapped children requested that, in the case of part-time classes, provision be made for adjustments in the number of children reported as enrolled so as to reflect the fact that such handicapped children were also being served part-time in regular classes.

Response. The provisions of subparagraph (j)(2) have been adjusted accordingly to allow the exclusion requested.

16. *Comment.* One commenter objected to the provision in subparagraph (f)(3) regarding the case of a finding of noncomparability after December 1 that Title I funding for the local educational agency would be suspended as of the date of the finding. The commenter recommended that the local educational agency be given thirty days to make the necessary changes and file a revised comparability report.

Response. The regulation has been modified, taking into account this concern. No time limit has been set. However, the regulation now states that if "prompt" action is taken to correct the non-compliance, there will be no suspension of the approval. Whether a local educational agency acted "promptly" to correct its non-compliance status would have to be determined on a case-by-case basis depending on such factors as the amount of corrective action needed, the size of the school district, and the compliance history of that district for that year.

17. *Comment.* One commenter asked that consideration be given to counting children in less than full-day kindergarten programs on a full-time equivalency basis.

Response. Recognizing the special nature of kindergarten programs, appropriate language has been provided in subparagraph (b)(1) to allow part-time kindergarten children to be counted on a full-time equivalency basis.

OTHER CHANGES IN PART 116a

1. Several typographical and technical corrections were made. Additionally, various changes were included as a means of clarification.

2. As indicated in the summary of comments on § 116.2, the definition of "educationally deprived children" is now included in § 116a.2. Conforming changes have been made to make it suitable to the local educational agency program.

3. In § 116a.5(b), the final sentence has been modified to indicate that, consistent with Section 144 of the Act, the amount of a Title I allocation attributable to children in a local institution is not available for reallocation. Another sentence was added concerning the length of the stay of children in institutions for allocation purposes.

4. In § 116a.11(a), a new subparagraph (4) was added for the purpose of defining "maximum grant" as used in this subsection for the purpose of clarity.

5. Section 116a.13 of the notice of proposed rulemaking has been deleted, since Section 101(a)(4)(B) of Pub. L. 93-380 repealed Part C of Title I as of July 1, 1975. Accordingly, proposed § 116a.14 has been renumbered § 116a.13.

6. A phrase has been added in § 116a.20(d) to emphasize that the use of the "no-wide variance" provision by a local educational agency, which meets the appropriate standards, is optional.

7. In § 116a.20( ), the number of children eligible to receive benefits under the National School Lunch Act has been added as a possible indicator of the number of children from low-income families for specified purposes.

8. As indicated in the comments on § 116.40, the provision concerning services "ordinarily provided" with State and local funds is now found in § 116a.22(b)(10), and modified to address the use of Title I funds when State and local funds are providing services that are similar to those provided under Title I.

9. Provisions in the proposed § 116a.23(f) which pertained to the use of equipment on private school premises have been moved to § 116.36.

10. § 116a.23-1(e) has been shortened and now incorporates by reference statutory provisions in Section 141A(b)(4) of the Act for review by the Court of Appeals of the Commissioner's actions under this section of the regulations and Section 141A of the Act.

11. In § 116a.25(a), subparagraphs (5) and (6) have added provisions to insure that operating procedures and coordination among parent councils have been provided.

12. Paragraph (c) of § 116a.25 has been modified to indicate that the local educational agency shall consult with the district council in establishing procedures to identify parents eligible for membership.

13. In § 116a.25(d), provisions have been added to indicate, where appropriate, that a local educational agency shall consider the publication of notices for elections in a language other than English; and to indicate that district advisory council members shall reside in the district and school members shall reside in the attendance area of that school.

14. In subparagraph (i)(1) of § 116a.26, a sentence has been added to indicate that schools serving eight or more grades may be considered as a separate grade span group for the purposes of determining comparability.

15. A new final paragraph (e) has been added to § 116a.26 which excludes from the comparability provisions, local educational agencies receiving ninety-five percent or more of their funds from Federal sources. This exclusion parallels § 116.19(e) in the maintenance of effort provisions.

Effective date: Pursuant to Section 431(d) of the General Education Provisions Act, as amended, (20 U.S.C. 1232(d)) these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 13.427, Educationally Deprived Children-Handicapped (Pub. L. 89-313); 13.428, Educationally Deprived Children-Local Educational Agencies; 13.429, Educationally Deprived Children-Migrants; 13.430, Educationally Deprived Children-State Administration; 13.431, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children)

Dated: May 26, 1976.

T. H. BELL,
U.S. Commissioner of Education.

Approved: September 16, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

PART 116—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES AND STATE AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED, HANDICAPPED, MIGRANT, AND NEGLECTED AND DELINQUENT CHILDREN—GENERAL PROVISIONS

Subpart A—Scope

Sec.
116.1 Applicability.
116.2 Definitions.

Subpart B—Duties and Functions of State Educational Agencies

116.3 Participation of States.
116.4 State administration and technical assistance.
116.5 Approval by State educational agency of applications from applicant agencies.
116.6 Review and complaint procedures.
116.7 Reports by State educational agencies.

Subpart C—Payments

Sec.
116.17 Payment procedures.
116.18 Title I funds not to be considered in determining State aid.
116.19 Maintenance of effort.
116.20 Withholding by the Commissioner.

Subpart D—Provisions Relating to the Use of Funds for Particular Purposes

116.30 Planning grants.
116.31 Cooperative projects.
116.32 Construction and equipment.
116.33 Reimbursement for expenses incurred by parent council members and volunteers.
116.34 Education aides.
116.35 Staffing for programs and projects.
116.36 Training.
116.37-39 [Reserved]

Subpart E—Requirements for Applicant Agencies

116.40 Title I funds supplementary to State and local funds.
116.41 Relation of Title I projects to other programs.
116.42 Administrative control of Title I property.
116.43 Measurement of educational achievement and evaluation of programs.
116.44 Dissemination and utilization of results of educational research and demonstrations.
116.45 Public information.
116.46 Reports by applicant agencies.
116.47 Individualized educational plans.
116.48 Operational responsibilities.

AUTHORITY: Sec. 2, Pub. L. 89-10, 79 Stat. 27, as amended, (20 U.S.C. 241a-241m, 242, 244), unless otherwise noted.

Subpart A—Scope

§ 116.1 Applicability.

(a) *Other Title I regulations.* The regulations in this part are applicable to all programs conducted under Title I of the Elementary and Secondary Education Act of 1965, for which regulations are contained in Parts 116a, 116b, 116c, and 116d of this chapter.

(b) *General provisions regulations for Office of Education programs.* Assistance provided under this part is subject to applicable provisions contained in Parts 100, 100b, and 100c (and relevant appendices) of subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(c) The text of the Title I statute is contained in full in the Appendix to this part.

(20 U.S.C. 241a)

§ 116.2 Definitions.

(a) As used in this part and in Parts 116a, 116b, 116c, and 116d (except as otherwise indicated in those parts)—

"Act" means the Elementary and Secondary Education Act of 1965 (Pub. L. 89-10) as amended. Title II of Pub. L. 874, 81st Congress, which was added by Title I of said Elementary and Secondary Education Act of 1965, is hereinafter in this part referred to as Title I.

(20 U.S.C. 241a)

"Applicant agency" means a local educational agency that applies for a grant under Part 116a, a State agency that applies for a grant under Part 116b, or Part

116c; and a State educational agency that applies for a grant under Part 116d.

(20 U.S.C. 244(6)(B))

"Child or children" except where otherwise specified means a person or persons not above 21 years of age who, under State law, are entitled to free public education which is provided as elementary and secondary education, not above grade 12. The term also includes a person or persons who are of preschool age.

(20 U.S.C. 241c-3, 241e(a)(1).)

(b) As used in this part, and in Parts 116a, 116b, 116c, and 116d (except as otherwise indicated in those parts) the following terms have the meaning given to them in section 403 of Pub. L. 81-874 (20 U.S.C. 244) which is set forth in the appendix to this part:

Average daily attendance
Average per pupil expenditure
Commissioner
Construction
County
Current expenditures
Elementary school
Equipment
Excess costs
Federal property
Free public education
Local educational agency
Parent
School facilities
Secondary school
State
State educational agency

(20 U.S.C. 241a, 244.)

Subpart B—Duties and Functions of State Educational Agencies

§ 116.3 Participation of States.

(a) *Required submissions.* Any State desiring to participate under Title I shall submit through its State educational agency to the Commissioner a general application and an annual program plan as set forth in section 434(b)(1)(A) and 434(b)(1)(B) of the General Education Provisions Act and the regulations in Part 100b of this chapter. However, with respect to the program described in Part 116d relating to migratory children of migratory agricultural workers or fishermen, subparagraph (1) does not apply. The annual program plan shall include: (1) The assurances required by Section 142(a) (1) and (3) of Title I;

(2) An assurance that the State educational agency will comply with Title I and the regulations in this part and the applicable provisions of Parts 116a, 116b, 116c, and 116d of this chapter;

(3) A statement describing the purposes for which Federal funds will be expended under Title I during the fiscal year for which the annual program plan is submitted; and

(4) A certificate by the appropriate State legal officer to the effect that the agency submitting the plan has the authority under State law to perform the duties and functions of a State educational agency under Title I and the applicable regulations, including those arising from the assurances given.

(b) *Approval by the Commissioner—(1) Determinations of the Commissioner.* The Commissioner will approve each annual program plan to participate in the grant program under Title I, submitted by a State through its State educational agency, if the Commissioner determines that the plan meets the requirements of the applicable provisions of Title I and the regulations in this part and Parts 116a, 116b, 116c, and 116d. The Commissioner will not finally disapprove (in whole or in part) such State program plan with regard to Title I except after reasonable notice and opportunity for a hearing.

(20 U.S.C. 241f(b), 1232c.)

§ 116.4 State administration and technical assistance.

(a) *General.* The State educational agency for a State for which the Commissioner has approved a plan, as specified in § 116.3(b), shall be responsible for the proper and efficient performance of the duties of such agency under Title I including compliance with its assurances to the Commissioner and the provision of technical assistance to local and State agencies with respect to the measurements and evaluations such agencies are required to submit pursuant to such Title.

(b) *Amount available for administration.* Each State educational agency is entitled to receive for each fiscal year an amount equal to the amount expended by it for performance of its duties under this section but not to exceed the amounts set forth in section 143(b) of Title I.

(20 U.S.C. 241g, 1232c)

§ 116.5 Approval by State educational agency of applications from applicant agencies.

(a) *Review by State educational agency.* The State educational agency shall review all applications by applicant agencies except for an applicant agency under Part 116d. The State educational agency shall not approve an application (1) for an amount which together with amounts of other approved applications by that agency, exceeds the amount available for grants to that agency determined in accordance with Title I or (2) unless it has determined that the application meets all of the applicable requirements of Title I and the regulations.

(b) *Effective date of approved application.* Projects approved pursuant to paragraph (a) of this section shall be considered to be in effect as of the date on which the application was submitted in substantially approvable form. In no event shall such date be earlier than the first day on which the funds being applied for become available for obligation, or the effective date of the State educational agency's annual program plan.

(c) *Notice and opportunity for hearing.* The State educational agency shall not finally disapprove any application in whole or in part without first affording the applicant agency reasonable notice and opportunity for a hearing with respect to such action in accordance with the requirements of section 425 of the General Education Provisions Act. Such notice shall include the reasons for the proposed disapproval. A hearing shall be held by the State agency 30 days after it receives a request from the applicant agency. If the State educational agency decides not to rescind its final action, it shall give notice of the decision to the applicant agency in writing, stating its reasons and indicating the right to appeal to the Commissioner within twenty days of the receipt of the notice.

(d) *Appeal.* An applicant agency aggrieved by the final action of a State educational agency shall be given the opportunity for an appeal to the Commissioner as set forth in section 425 of the General Education Provisions Act.

(e) *Availability to the public.* Each application of a local educational agency or a State agency for a grant under Title I; the related documents referred to in Parts 116a, 116b, 116c, and 116d; and the evaluation and other reports referred to in such parts, shall be made available to the public by the State educational agency in the manner prescribed by § 116.35.

(20 U.S.C. 241e(c), 241f, 1231b-2, 1231d)

§ 116.6 Review and complaint procedures.

The State educational agency shall establish procedures for investigating complaints alleging violations of Title I or the regulations for that Title including:

(a) Procedures to carry out section 425 (a) and (c) of the General Education Provisions Act and § 116.5(c); and

(b) Procedures for resolving the complaints of parents and other individuals and organizations, including:

(1) Specific time limits for investigation and resolution of complaints, not normally to exceed 60 days;

(2) An opportunity for the complainant to present evidence to the State educational agency; and

(3) Dissemination of information concerning procedures under this paragraph to interested parties, including parent advisory councils.

(20 U.S.C. 241f(a)(3), 1231b-2, 1231d)

§ 116.7 Reports by State educational agencies.

(a) *Annual evaluation reports.* Following the close of each fiscal year and no later than November 15 of the next fiscal year, the State educational agency shall submit to the Commissioner reports evaluating the effectiveness of programs and projects under Title I in meeting the special educational needs of participating children during the preceding school year and the following summer period. In addition to the State annual evaluation reports required by this paragraph, each State educational agency shall submit evaluation reports for two applicant agencies applying under Part 116a, including one for such an agency whose allocation for funds under Title I of the Act for the current fiscal year is among the five highest in the State.

(b) *Reports concerning complaints.* The State educational agency shall report to the Commission on the disposition of all complaints filed and reviewed pursuant to the procedures developed under § 116.6. Reports shall be made as follows:

(1) *Interim reports.* In any case, where the complaint has not been fully investigated and resolved by the expiration of a 60-day period, the State educational agency shall report at that time, the substance of the complaint to the Commissioner along with an explanation of its status;

(2) *Final reports.* In the case of a complaint which has been fully investigated, the State educational agency shall submit a report to the Commissioner which includes at least:

(i) The substance of any allegation and the name of the individual citizen, private organization or local educational agency making the allegation;

(ii) A summary of the results of the investigation and any hearings held concerning the allegation; and

(iii) A statement of the disposition of the complaint by the State educational agency, giving the reasons for such disposition.

(3) *Copies to be sent.* The State educational agency, upon sending its report to the Commissioner, shall send copies thereof to the appropriate applicant agency and the complainant.

(20 U.S.C. 241f(a)(3)(B), 1231(a), 1232c)

Subpart C—Payments

§ 116.17 Payment procedures.

The Commissioner will make all payments of Title I funds in accordance with the requirements of Title I, the regulations of this part and applicable provisions of Parts 116a, 116b, 116c, and 116d, the requirements of Section 435 of the General Education Provisions Act and the provisions set out in Subpart E of Part 100b of this chapter.

(20 U.S.C. 1232d)

§ 116.18 Title I funds not to be considered in determining State aid.

No payments by the Commissioner under Title I will be made to a State for any fiscal year in which the State has taken such payments into consideration in determining the eligibility of an applicant agency for State aid, or in determining the amount of that aid for the free public education of children in such a way as to penalize the applicant agency with respect to the availability of State funds.

(20 U.S.C. 241g(c)(1))

§ 116.19 Maintenance of effort.

(a) *General requirement.* No payments under Title I for any fiscal year may be made by the State educational agency to an applicant agency unless the State educational agency finds that the combined fiscal effort of that applicant agency and the State with respect to the provision of free public education by that applicant agency for the preceding fiscal year was not less than such combined fiscal effort for that purpose for the second preceding fiscal year.

(b) *Measurement of combined fiscal effort.* For purposes of this section, combined fiscal effort by an applicant agency shall be measured by the amount of the current expenditures per pupil by the applicant agency other than expenditures from funds derived from Federal sources for which the applicant agency is required to account to the Federal Government directly or through the State educational agency; such as funds under Titles I, II, III and IV of the Act, Titles III and V of the National Defense Education Act of 1958, the Johnson-O'Malley Act, and the Economic Opportunity Act of 1964. A combined fiscal effort in the preceding fiscal year shall not be deemed to be a reduction from that in the second preceding fiscal year unless the per pupil expenditure in the preceding fiscal year is less than that in the second preceding fiscal year by more than 5 percent. Any such reduction in the combined fiscal effort by an applicant agency for any fiscal year by more than 5 percent will disqualify the applicant agency unless the agency is able to demonstrate to the satisfaction of the State educational agency that such a reduction was occasioned by an unusual event, such as the removal of a large segment of property from the tax rolls, that could not have been fully anticipated or reasonably compensated for by the applicant agency and a diminished fiscal effort on the part of that agency is not otherwise indicated.

(c) *An applicant agency which receives substantial Federal funds.* An applicant agency receiving at least 95 percent of its funds for education from Federal sources will not be required to meet the provisions of this section.

(20 U.S.C. 241g(c)(2))

§ 116.20 Withholding by the Commissioner.

(a) *Nonconformity.* Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in regard to Title I of the Act in the annual program plan of that State, he will notify the agency that further payments will not be made to the State under Title I of the Act (or, in his discretion, that the State educational agency will not make further payments under Title I of the Act to specified applicant agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until the Commissioner is so satisfied, further payments under Title I of the Act will not be made to that State or payments by the State educational agency will be limited to payments to applicant agencies not affected by the failure, as the case may be.

(b) *Suspension.* The remedy of suspension pending termination as provided in section 434(c) of the General Education Provisions Act may be invoked in connection with a termination under this section.

(c) *Attempts to resolve differences.* Prior to initiating a hearing under this section, the Commissioner will attempt to resolve promptly any apparent differences with the State educational agency regarding the interpretation or application of the provisions of Title I of the Act and the pertinent regulations.

(20 U.S.C. 241(j), 1232c(c), (d))

Subpart D—Provisions Relating to Use of Funds for Particular Purposes

§ 116.30 Planning grants.

An applicant agency may apply for a grant in an amount not exceeding one percent of the maximum grant it is eligible to receive or $2,000, whichever is greater, for planning during the current fiscal year, provided that (a) such planning was, or will be, directly related to programs or projects to be carried out under Title I of the Act and has resulted, or is reasonably likely to result, in a program which will be carried out under that Title, and (b) such planning funds are necessary for that purpose because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary for adequate planning for programs or projects to be carried out under Title I.

(20 U.S.C. 241e(a)(1) and (5).)

§ 116.31 Cooperative projects.

Two or more applicant agencies eligible for grants under Title I of the Act may apply for a grant for a single project (including a planning project) to be carried out jointly in accordance with arrangements between or among such educational agencies.

(20 U.S.C. 241e(a)(1))

§ 116.32 Construction and equipment.

(a) *General.* An application for a project grant under Title I may include the acquisition of equipment or the construction or remodeling of school facilities only if it is demonstrated as being essential to the success of a program or project under Title I. Each application shall describe the need for such equipment or construction, in addition to other equipment or facilities previously acquired or constructed by the applicant with funds under Title I and for which the applicant is accountable, in connection with the proposed project. The applicant shall further describe how all such equipment or facilities will be used. If the construction of school facilities is so demonstrated as being essential for a program or project, the application must nevertheless comply with other requirements of Title I and the regulations in this chapter, such as the requirements in Subpart K, Part 100b of this chapter in regard to labor standards and overall State construction planning and, in relation to the overall program, the limitations in § 116a.23(f) in regard to participation by children enrolled in private schools.

(b) *Prohibition against maintaining isolation.* The State educational agency shall not approve a project involving construction of school facilities if it finds that such construction would tend to maintain the racial, cultural, or linguistic isolation of children.

(20 U.S.C. 241e(a) (1) and (4), 1232b)

§ 116.33 *Reimbursement for expenses incurred by parent council members and volunteers.*

Members of parent councils and volunteers not receiving regular compensation under Title I may be reimbursed from Title I funds for personal expenses directly attributable to the performance of their duties and functions as set forth in approved applications.

(20 U.S.C. 241e(a) (14), 1231d)

§ 116.34 Education aides.

An application for a project which involves the use of education aides shall include evidence that the applicant agency has provided, or will provide, a coordinated program of training in which the aides participate together with the professional staff whom they will assist.

(20 U.S.C. 241e(a) (12))

§ 116.35 Staffing for programs and projects.

Payment of Title I funds may be authorized for the employment of the personnel required to provide specific services set forth in approved Title I applications. Such applications shall state the number and types of personnel to be employed.

(20 U.S.C. 241e(a) (1))

§ 116.36 Training.

Payment of Title I funds may be authorized for pre-service and in-service training of persons identified in this section.

(a) *Scope of training.* Such training must be directly related to: (1) The services which such persons will perform during the same project year in connection with an approved program or project under Title I; and

(2) Their needs for the development of competencies required if the program or project is to be effective in meeting the special educational needs of the identified children to be served in the program or project. Such training must be coordinated with any other training being provided in connection with the program or project.

(b) *Eligible persons.* Such training may be provided for:

(1) Title I staff members, Parent Council members, and volunteers who are engaged to perform specific services related to approved programs or projects;

(2) Non-Title I staff specialists who will be dealing solely with children to be served by the Title I projects, and regular classroom teachers of such children; and

(3) The principal of a school for which a Title I program or project has been approved.

(20 U.S.C. 241e(a) (1), (12), and (14), 1231d; House Report No. 93-805, p. 17 (1974), Sen. Report No. 93-1026, p. 144 (1974).)

§§ 116.37–116.39 [Reserved]

Subpart E—Requirements for Applicant Agencies

§ 116.40 Title I funds supplementary to State and local funds.

(a) *General.* (1) Each application by an applicant agency for a grant under Title I shall contain an assurance that the use of the grant funds will not result in a decrease in the use (for educationally deprived children) of State or local funds which, in the absence of funds under Title I, would be made available for the education of such children, and that such children will not otherwise be penalized in the application of State and local funds because of such a use of funds under Title I.

(2) No project under Title I shall be approved unless Federal funds made available for that project (i) will be used to supplement, and to the extent practical, increase the level of State and local funds that would, in the absence of such Federal funds, be made available for the education of pupils participating in that project; (ii) will not be used to supplant State and local funds available for the education of such pupils; and (iii) will be used solely to pay the excess costs of programs and projects assisted under Title I.

(b) *Services which applicant is required to provide.* Title I funds shall not be used to provide services which the applicant agency is required to provide by State law or pursuant to a formal determination under Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972 (Pub. L. 92-318), or section 504 of the Vocational Rehabilitation Act of 1973, as amended, or pursuant to a final order of a court.

(20 U.S.C. 241e(a) (1) and (3); Lau v. Nichols 414 U.S. 563 (1974))

§ 116.41 Relation of Title I projects to other programs.

(a) *Coordination in development of application.* Each application by an applicant agency for a grant under Title I shall demonstrate that, in the development of such application, the applicant has taken into consideration benefits which are or may be available through other public and private agencies, and which would contribute toward meeting the special educational needs of educationally deprived children. Such application shall also demonstrate that the applicant has considered suggestions and offers of assistance which have been timely made by such agencies and which may aid in carrying out or making more effective the program or project for which application is made. Applicants shall, upon request, make their applications available to interested public and private agencies far enough in advance of final formulation to enable such agencies to make meaningful suggestions and offers.

(b) *Simultaneous use of funds.* The simultaneous use of funds under Title I and funds under other Federal programs to support discrete portions of a particular project is permissible if (1) the requirements of each program, considered separately, are satisfied with respect to the portion of the project which is being financed from such program; (2) there is no commingling of funds derived from one appropriation with funds derived from another appropriation; and (3) there is no transfer of funds derived from an appropriation to the use of an activity not authorized by the law authorizing such appropriation.

(c) *Use of State and local funds.* A program or project set forth in a project application that meets all the requirements of Title I shall be funded from State and local funds to the extent that such funds are specifically designated and available at the time of application for particular services included in the project. Under the conditions set forth in this section, Title I funds may be used to provide those services not provided by funds from other sources.

(20 U.S.C. 241e(a) (1) and (3), and 1232c (b)(1))

§ 116.42 Administrative control of Title I property.

(a) *Control and title in public agency.* Control over the use of funds provided under Title I, and title to and administrative control over property acquired with these funds, shall be in a public agency, which will exercise such control consistent with §§ 100b.215 and 100b.216 of the general provisions regulations (45 CFR 100b.215, 100b.216). These funds and property shall be used for the purposes provided in Title I but such use shall not inure to the benefit of any private school. The incidental use of such property for other purposes is permitted only for related educational purposes on public premises and only so long as such use does not interfere with the carrying out of a Title I project.

(b) *Equipment.* Equipment acquired with Title I funds may in certain cases be placed on private school premises. Title to and administrative control over such equipment must be retained and exercised by a public agency. In exercising that administrative control, the public agency shall keep records of, and account for, the equipment and shall also assure itself that the equipment is being used solely for the purposes of the project, and remove the equipment from the private school premises when necessary to avoid its being used for other purposes or when it is no longer needed for the purposes of the project.

(c) *Assurance.* An application for a grant under Title I must contain satisfactory assurance that Title I funds and property derived therefrom, will at all times be under the control of, and be administered by, a public agency in accordance with the provisions of Title I and the regulations in this part.

(20 U.S.C. 241e(a) (3) (A) and 1232c(a))

§ 116.43 Measurement of educational achievement and evaluation of programs.

(a) *Annual evaluation procedures.* Each application by an applicant agency for a grant under Title I shall describe the procedures and techniques to be used in making at least annually an evaluation of the effectiveness of the program in meeting the special educational needs of participating children including appropriate performance criteria and the instruments and methods to be used to measure objectively changes in the educational achievement of such children.

(b) *Standards.* The measurement of educational achievement of participating children shall be carried out with regard to objective standards or norms. The type of measurement used shall give particular regard to the requirement under § 116.7 of Subpart B that the State educational agency report to the Commissioner on the effectiveness of the programs in that State in improving the educational achievement of participating children.

(c) *Children in private schools.* The evaluation of programs and projects shall, consistent with the nature and extent of participation of children enrolled in private schools, be extended to such participation.

(20 U.S.C. 241c–1, c–2, c–3, 241e(a) (2) and (6), 241e–1)

§ 116.44 Dissemination and utilization of results of educational research and demonstrations.

Each application by an applicant for a grant under Title I shall describe the methods to be used by the applicant for reviewing, selecting, and disseminating to teachers and educational administrators significant information on the latest developments and most recent experiments in education so that such information will be available for use in program planning and operation. These methods may include, among other things, inservice education, professional workshops and seminars, consultations and visitations, and reports on the organization, operation and outcome of projects under Title I.

(20 U.S.C. 241c–1, c–2, c–3, 241e(a) (10))

§ 116.45 Public information.

Each application by an applicant agency for a grant under Title I shall include specific plans for disseminating information concerning the provisions of Title I, and the applicant's past and present Title I programs—including evaluations of such programs—to parents and to the general public. The applicant agency shall make available to them, upon request, those applications, evaluations of the applicant's past Title I projects, all reports required by § 116.46 to be submitted to the State educational agency, comparability reports and such other documents as may be reasonably necessary to meet the needs of such parents or other members of the public for information related to the comprehensive planning, implementation, and evaluation of the Title I program, but not including information relating to the performance of identified children and teachers. Such information and documentation shall be available until the expiration of five years after the completion of a Title I project, or until any pending audit by the Department of Health, Education, and Welfare or the General Accounting Office (consistent with Section 434(a) of the General Education Provisions Act) has been completed and the questions arising out of it have been resolved. Such plans shall include provision for the reproduction, upon request, of such documents free of charge or at reasonable costs (not to exceed the additional costs incurred which are not covered by Title I funds) or provisions whereby persons requesting such copies will be given adequate opportunity to arrange for the reproduction of such documents.

(20 U.S.C. 241e(a) (8), and (14) (D), 1231d)

§ 116.46 Reports by applicant agencies.

Each application by an applicant agency under Title I shall provide assurance that the applicant agency will render to the State educational agency an annual report and such other reports, in such form, and containing such information, including the results of objective measurements of educational achievement and program effectiveness required by § 116.43 and of research and replication studies, as may be reasonably necessary to enable the State educational agency to perform its duties under Title I. In the case of reports relating to performance the information supplied shall have been developed in accordance with specific performance criteria related to program objectives.

(20 U.S.C. 241c–1, 241c–2, 241c–3, 241e(a) (6) and (7), 241f(a) (3))

§ 116.47 Individualized educational plans.

In considering applications under Title I, a State educational agency shall encourage where feasible applicant agencies submitting such applications to provide for the development for each child participating in an approved program or project under such Title I, an individualized written educational plan (maintained and periodically evaluated), agreed upon jointly by the applicant agency, a parent or guardian of the child, and when appropriate, the child. Funds under Title I of the Act may be used for the purpose of developing, maintaining and evaluating such plans.

(20 U.S.C. 241e(b))

§ 116.48 Operational responsibilities.

The approval of an application under Title I does not relieve an applicant agency of the responsibility to carry out its project or projects in accordance with the approved application, Title I, and the applicable regulations.

(20 U.S.C. 241e, 241j, 1232e(c))

PART 116a—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

Subpart A—General

Sec.
116a.1 Applicability.
116a.2 Definitions.

Subpart B—Eligibility for and Amount of Grants

116a.3 Eligibility of local educational agencies.
116a.4 Determination of grant which a local educational agency in a State is eligible to receive.
116a.5 Allocation of county aggregate grants by State educational agencies.
116a.6 Local educational agencies in more than one county.
116a.7 Local educational agencies with overlapping jurisdictions or serving children from another school district.
Sec.
116a.8 Changes in local educational agencies.
116a.9 Ratable reductions.
116a.10 Further assistance to certain local educational agencies.
116a.11 Reallocation.
116a.12 Special incentive grants.
116a.13 Grants to local educational agencies in the outlying areas and payments to the Secretary of the Interior.

Subpart C—Program Requirements

116a.19 Project applications.
116a.20 Selection of Title I attendance areas.
116a.21 Needs assessment.
116a.22 Project description, size, scope, and quality.
116a.23 Participation by children enrolled in private schools.
116a.23-1 Waiver of requirements for participation by children enrolled in private schools.
116a.24 Bonus pay for teachers.
116a.25 Parent advisory councils.
116a.26 Comparability of services.

AUTHORITY: Section 2, Pub. L. 89-10, 79 Stat. 27, as amended, (20 U.S.C. 241a-241m, 242, 244), unless otherwise noted.

Subpart A—General

§ 116a.1 Applicability.

(a) The regulations in this part and the general regulations in Part 116 of this chapter govern programs and projects for which funds are provided to local educational agencies under Title I of the Elementary and Secondary Education Act to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and for children in local institutions for neglected or delinquent children.

(b) Assistance provided under this part is subject to applicable provisions contained in the General Provisions for Education program regulations subchapter A of this chapter (relating to fiscal, administrative, property management and other matters) including Parts 100, 100b (and related appendices) and 100c.

(c) The text of the Title I statute is contained in full in the Appendix to Part 116 of this chapter.

(20 U.S.C. 241a)

§ 116a.2 Definitions.

As used in this part—

"Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside.

(20 U.S.C. 241c(a)(1))

"Educationally deprived children" means (1) children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age, and (2) children who are handicapped.

(20 U.S.C. 241c(a)(1)(A))

"Institution for delinquent children" means a public or private residential facility which is operated primarily for the care of children who have been adjudicated to be delinquent or in need of supervision. The term also includes an adult correctional institution in which children reside.

(20 U.S.C. 241c(c)(2), (B), (C))

"Institution for neglected children" means a public or private residential facility (other than a foster home) which is operated primarily for the care of at least ten children who have been committed to the institution, or voluntarily placed in the institution pursuant to applicable State law, because of the abandonment of or neglect by, or death of, parents or persons acting in the place of parents.

(20 U.S.C. 241c(c)(2) (B), (C))

"Project area" means an attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a project.

(20 U.S.C. 241e(a)(1))

Subpart B—Eligibility for and Amount of Grants

§ 116a.3 Eligibility of local educational agencies.

(a) A local educational agency in a State (other than Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) is eligible for a grant under Title I for a fiscal year if the Commissioner determines, on the basis of satisfactory data available to him, that the number of children counted under section 103(c) of Title I for the school district of such agency for such year amounts to at least 10.

(b) If the Commissioner does not have available satisfactory data on a school district basis, a local educational agency is eligible for such a grant if the school district served by such agency is located in whole or in part in a county in which the Commissioner determines that there are 10 or more of such children.

(20 U.S.C. 241(c)(b))

§ 116a.4 Determination of grant which a local educational agency in a State is eligible to receive.

The grant which a local educational agency in a State (other than Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) is eligible to receive under Subpart 1 of Part A of Title I for a fiscal year will be determined by the Commissioner in accordance with the provisions of sections 103(a)(2)–(4) and 103(c) of Title I, subject to the provisions of section 144 of such Title.

(20 U.S.C. 241c(a) (2), (3), (4), 241c(c))

§ 116a.5 Allocation of county aggregate grants by State educational agencies.

(a) *General.* Pursuant to Section 103 of Title I, the Commissioner is authorized to determine the grant which a local educational agency is eligible to receive, if satisfactory data are available from the Department of Commerce for such agencies. However, if such data are not available, these determinations are made for counties, and the State educational agencies allocate the county amounts among the local educational agencies in the counties. This section prescribes criteria for the allocation by a State educational agency of the aggregate amount determined for a county (under section 103(a)(2) of Title I) among the local educational agencies whose school districts are located in whole or in part in such county. Such aggregate amount is hereinafter referred to as the county aggregate grant.

(b) *Children in institutions.* To the extent that a county aggregate grant is based on the number of children aged 5 to 17, inclusive, living in institutions for neglected or delinquent children, the county aggregate grant shall be allocated on the basis of the location of such institutions in the various school districts of the local educational agencies concerned. For the purpose of this part, the number of such children shall be the number in the October caseload who have resided in the institution for at least 30 days. If a State educational agency determines that a local educational agency is unable or unwilling to provide for the special educational needs of such children, that portion of the grant of that local educational agency which is based on such children shall be assigned to the State educational agency if it assumes that responsibility. If the State educational agency does not assume that responsibility, it shall designate another State or local public agency that is able and willing to assume that responsibility. If no such public agency is found by the State educational agency, the amount attributable to such children shall be deducted from the local educational agency's allocation and shall not be available for reallocation.

(c) *Allocation of remainder of county grant.* Subject to applicable provisions of law (including the provisions of section 144 of Title I), the remainder of the county aggregate grant shall be allocated by the State educational agency among the several local educational agencies whose school districts lie (in whole or in part) within the county on the basis of the current distribution in the county of children aged 5 to 17, inclusive, from low-income families (using a poverty level selected by the State educational agency consistent with the purposes of Title I) as determined on the basis of the available data which such State educational agency deems best to reflect the current distribution in the county of children aged 5 to 17, inclusive, from low-income families. The following are considered acceptable types of data: (1) 1970 census data on the number of children from low-income families, and (2) data on children in families receiving payments under the program of aid to families with dependent children under a State plan approved under Title IV of the Social Security Act and foster children. Other types of data must be approved by the Commissioner before use by the State educational agency.

(20 U.S.C. 241c(a) (2), (3)(A))

§ 116a.6 Local educational agencies in more than one county.

The allocation made pursuant to § 116.5 to a local educational agency located in more than one county shall be made separately for each county in which a part of the school district served by that local educational agency is located. The grant for such a local educational agency shall be the sum of its allocations from the aggregate grants of the counties in which it is located.

(20 U.S.C. 241c(a)(3))

§ 116a.7 Local educational agencies with overlapping jurisdictions or serving children from another school district.

In any case in which two or more local educational agencies have responsibility for different groups of children in a school district, or serve school districts which overlap, or in any case in which a local educational agency provides free public education for a substantial number of children residing in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes for which the grants under Title I are made available.

(20 U.S.C. 241c(a)(3)(B))

§ 116a.8 Changes in local educational agencies.

(a) *Merger or consolidation.* In any case in which there is a merger or consolidation of local educational agencies during the school year, the grant which each such agency was eligible to receive shall become available to the surviving or consolidated agency. The surviving or consolidated agency shall be responsible for projects which have not been completed and were previously approved for each of the agencies participating in the merger or consolidation.

(b) *Changes in service areas.* In any case in which the geographical area of a school district served by a local educational agency is diminished, or divided with another local educational agency, during the school year, the State educational agency shall redetermine the grants by using the same method used in making the original determination. However, nothing herein shall preclude the completion, where appropriate, of previously approved projects by the agency originally submitting the projects by itself or through a cooperative undertaking.

(20 U.S.C. 241c(a)(3))

§ 116a.9 Ratable reductions.

If the sums appropriated for any fiscal year are not sufficient to pay in full the amounts which all local educational agencies are eligible to receive under Title I for that year, the amounts available to local educational agencies shall be determined in accordance with section 144 of Title I.

(20 U.S.C. 241h)

§ 116a.10 Further assistance to certain local educational agencies.

Section 101(a)(10) of Pub. L. 93–380 provides for an authorization of appropriations for each fiscal year to be allocated at the discretion of the Commissioner to assist local educational agencies whose total allocation under part A of Title I is 90 per centum or less than such allocation under such part A during the preceding fiscal year. The Commissioner will distribute any funds appropriated under section 101(a)(10) among local educational agencies described in the preceding sentence in such a manner as to raise the allocations for each such agency to 90 percent of its preceding fiscal year's allocation or as close to that level as the appropriation will permit. Any funds in excess of the amount required for that purpose shall be allocated by the Commissioner to those local educational agencies which would have received more than 90 percent of their preceding year's allocation if the "85 percent hold harmless" provisions of section 144 of Title I were not in effect. The Commissioner will make such allocations on the basis of the most satisfactory data available to him as to the amount each such local educational agency would have received in the absence of the "hold harmless" provision.

(20 U.S.C. 241b-1, 241b; Pub. L. 93-380, sec. 101(a)(10))

§ 116a.11 Reallocation.

(a) *States.* (1) The State educational agency in the States of the Union, the District of Columbia, and Puerto Rico shall determine not earlier than March 31 of a fiscal year the amounts allocated for that year to local educational agencies in excess of the amounts required for approved programs and projects and shall certify such amounts to the Commissioner. Such amounts shall be made available, first by State educational agencies to other educational agencies in the particular State but not so as to make available to an agency more than the maximum grant to which that agency is entitled. (2) The amounts made available under this paragraph for distribution within a State shall be distributed among the local educational agencies which apply for additional funds and which have the greatest needs to redress inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 103(a)(2) of Title I and §§ 116a.4 and 116a.5. The needs of the local educational agencies, and the amounts to which they shall be eligible, shall be determined on the basis of the extent to which the State educational agency determines the application of those provisions fail, as a result of population shifts, changing economic conditions, or other reasons, to reflect actual needs. (3) In the event excess amounts are still available after applying the foregoing provisions of this paragraph, those excess amounts will be distributed by the Commissioner among other States of the Union or the District of Columbia, or Puerto Rico in accordance with their needs as determined by the Commissioner for use by local educational agencies having the greatest need therefor. In no event, however, will the total amount made available to an agency exceed the maximum grant to which that agency is entitled. (4) "Maximum grant" for the purpose of this subsection means the grant which a local educational agency is eligible to receive before the operation of the provision for ratable reductions as set forth in Section 144 of Title I and § 116a.9.

(b) *Outlying areas; Department of Interior.* By March 31 of each fiscal year the Commissioner may require (1) State educational agencies in Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands to certify to him the amounts for which applications have been or will, during that fiscal year, be approved by such agencies, and (2) the Department of the Interior to report the amount needed by that Department for Title I projects. The excess of the amounts made available to any of such agencies or the Department of the Interior over the amounts which the Commissioner determines are needed by them will be redistributed among eligible agencies according to their respective needs for such amounts as redetermined by the Commissioner at that time.

(20 U.S.C. 241b)

§ 116a.12 Special incentive grants.

(a) *General.* Subject to the provisions of section 144 of Title I any State of the Union and the District of Columbia shall be entitled to receive a grant pursuant to Part B of Title I if it meets the requirements of that Part.

(b) *Applications.* (1) An incentive grant under this section will be made to a State upon application therefor by the State educational agency to the Commissioner submitted not more than 30 days after the date on which the Commissioner notifies the State educational agency of the State's eligibility for such grant and the amount thereof, or by the end of the applicable fiscal year, whichever occurs earlier. (2) Such an application shall include information concerning the policies and procedures to be used in selecting the local educational agencies which will receive incentive grant funds and the amounts of such assistance. Such information shall be presented in detail sufficient to assure the Commissioner that incentive grant funds will be made available to local educational agencies in the State with the greatest need for assistance under Title I and in amounts corresponding to their respective needs. Such policies and procedures shall take into account factors appropriate for those purposes, including the amounts available to local educational agencies under Part A of Title I; the number and percentage of children from low-income families in the several school districts; the number and percentage of such children not otherwise being served under Title I; any sudden influx in the number of such children; dropout rates; the incidence and severity of special educational needs as indicated by test scores or other measures; the availability of funds from other sources for programs for educationally deprived children; and the local fiscal effort.

(c) *Use of funds.* Incentive grant funds shall be made available to a limited number of local educational agencies for specific projects which the State educational agency deems to be innovative or which: (1) Show special promise of success through the modification or revision of existing Title I programs; (2) are of sufficient size, scope, and quality as required by § 116a.22; (3) include performance criteria to be used in connection with the evaluation of such projects; and (4) otherwise meet the requirements for projects under Part A of Title I.

(20 U.S.C. 241d, 241d-1, 241d-2, 241g(b)(1))

§ 116a.13 Grants to local educational agencies in the outlying areas and payments to the Secretary of the Interior.

(a) *Allotments.* An amount equal to one per centum of the amount allotted for grants to local educational agencies in States as defined in section 103(a)(4) of Title I shall be allotted (1) for grants to local educational agencies of Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands and (2) for payments to the Secretary of the Interior. Such additional amounts shall be allotted as will assure that the amount for each such outlying area and for payments to the Secretary of the Interior shall not be less than the corresponding amount for fiscal year 1973.

(b) *Out-of-State Indian children.* The Secretary of the Interior shall, from the amount allotted to him in accordance with paragraph (a) make payments to local educational agencies upon such terms as the Commissioner finds will best carry out the purposes of Title I, with respect to Indian children who do not reside in the State in which such agency is located but who are being educated in the elementary and secondary schools of such agencies under special contracts with the Department of Interior. The use of such funds for the special educational needs of such children shall be approved by the State educational agency of the State in which the local educational agency is located and the Department. The amount available to a local educational agency shall not exceed for each such child 40 per centum of (1) the average per pupil expenditure in the State in which the agency is located or (2) 120 per centum of such expenditure in the United States, whichever is greater.

(c) *Agreements.* The remainder of the payments to be made to the Secretary of the Interior not required for the purposes of paragraph (b) shall be made pursuant to an agreement between the Commissioner and the Secretary of the Interior, containing such assurances and terms as the Commissioner determines will best achieve the purpose of Title I. Such agreement shall contain assurances that payments made pursuant to this paragraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of Title I, this Part, and Part 118.

(20 U.S.C. 241c(a)(1), 241c(d))

Subpart C—Program Requirements

§ 116a.19 Project applications.

(a) *General.* Grants under Title I to a local educational agency may be made only on the basis of applications therefor which are submitted to the State educational agency and approved by it in an amount not in excess of the allocation of the funds made available for that local educational agency pursuant to § 116a.5 of Subpart B.

(b) *Projects and project areas.* (1) An application for a grant under Title I by a local educational agency shall set forth one or more projects specifically designed to meet the special educational needs of educationally deprived children residing in a school attendance area (or areas) having high concentrations of children from low-income families. (2) If the local educational agency has children living in institutions for neglected or delinquent children, who have been counted pursuant to section 103(c)(1)(C) of Title I and § 116a.5(b), then such application shall also set forth a project (or projects) designed specifically to meet special educational needs of such children.

(c) *Location of services.* The project itself shall be carried out at locations where the needs of the children can best be served.

(d) *Prohibition against assignment of allocation.* Subject to the reallocation authority in § 116a.11 of Subpart B, no local educational agency may assign any part of its allocation to another agency. This does not, however, prevent a State educational agency from exercising its authority under § 116a.7 nor prevent two or more applicants in one or more States from conducting a joint program or project (including a planning project) through a combined use of funds made available to them.

(20 U.S.C. 241e, 241e(a)(1), 241g(a)(3)).

§ 116a.20 Selection of Title I attendance areas.

(a) *Designation of project areas.* An application for a grant under Title I by a local educational agency (other than an application for a grant for planning) shall designate the project area or the institution for which each project set forth in the application is designed. The project area must be sufficiently restricted in size in relation to the nature of the project as to avoid jeopardizing the effectiveness of the project in meeting its aims and objectives.

(b) *Eligibility of attendance areas.* (1) Except as otherwise provided in paragraphs (g) and (h) and section 130 of Title I of the Act, a school attendance area for either a public elementary school or a public secondary school may be designated as a project area, or for inclusion in a project area, if it has, on a percentage or numerical basis, a high concentration of children from low-income families.

(2) An attendance area may be designated under paragraph (1) on a percentage basis if the percentage of children from low-income families in that attendance area is at least as high as the percentage of such children residing in the whole of the school district. In addition, upon specific request by the local educational agency, the State educational agency may approve the designation of attendance areas in which at least 30 percent of the children are from low-income families. For the purposes of the preceding sentence, such children includes only children who are determined to be eligible for free lunches, pursuant to the criteria established by the appropriate State educational agency pursuant to the National School Lunch Act (42 U.S.C. 1758(b)) and for which regulations are provided in 7 CFR 245.

(3) An attendance area may be designated under paragraph (1) on a numerical basis if the estimated number of children from low-income families residing in that attendance area is at least as large as the average number of such children residing in each of the several school attendance areas in the school district.

(4) If a combination of the numerical and percentage basis is used, the number of attendance areas actually designated under paragraph (1) may not exceed the number of such areas that could be so designated if only one such method had been used.

(5) Each of the provisions of this paragraph and of paragraphs (c), (d), (g), and (h) of this section may be applied separately to groups of schools (e.g., elementary, junior high school or middle school, and secondary) grouped in accordance with § 116a.26(f)(1) and (2).

(20 U.S.C. 241e(a)(1)(A))

(c) *Ranking of attendance areas.* (1) Except upon request to and approval by the State educational agency based on an assessment of particular educational needs in accordance with subparagraph (2) of this paragraph, a local educational agency shall not designate a school attendance area as a project area (or for inclusion in a project area) unless all attendance areas with a higher percentage or number of children of low-income families (depending on the method used to determine the eligibility of the school attendance area) have been so designated or have been designated to receive (through the use of funds from other sources) services of the same nature and scope as those that would otherwise be provided under Title I.

(2) A local educational agency is not required to designate an area on the basis of its rank. If such agency can demonstrate, to the satisfaction of the State educational agency, that the incidence and severity of educational deprivation in that area is substantially less than in other attendance areas proposed to be designated. In no event, however, shall the State educational agency approve such a request without first determining (in accordance with the procedures in § 116a.26) that the services provided with State and local funds in any area which has a higher percentage or number of children of low-income families but which is not designated for a project area are comparable to the services provided in other areas not designated.

(d) *Districts with no wide variance in the incidence of poverty.* If there is no wide variance in the concentrations of children from low-income families among the several school attendance areas in a school district, the whole of that school district may at the option of the local educational agency be regarded as a project area. Such a determination may be made only if the variation between the areas with the highest and lowest percentage of such children is not more than one-third of the average percentage of children from low-income families in the district as a whole.

(e) *Cooperative projects.* In the case of a project undertaken jointly by two or more local educational agencies, the project area with respect to each school district must be one that qualifies as a project area under this section. However, the whole of the project area must be considered in determining whether it is sufficiently restricted in size in relation to the nature of the project as to maintain the effectiveness of the project in meeting its aims and objectives.

(f) *Determining number of children from low-income families.* Except for the purposes of the second sentence of paragraph (b)(2) of this section, where data are not available to make an accurate determination of the number of children from low-income families, the number may be estimated on the basis of the number of children in families receiving Aid to Families with Dependent Children (AFDC), the number of children eligible to receive benefits under the National School Lunch Act, or any other reliable and uniform indicator of poverty, or a combination of such factors. However, whatever data are used must be applied uniformly throughout the applicant's school district.

(20 U.S.C. 241e(a)(1)(A))

(g) *School attendance areas qualifying in prior fiscal years.* A school attendance area which (1) does not meet the requirements of this section for a fiscal year but (2) did meet such requirements and received Title I services in either of the two fiscal years immediately preceding such fiscal year shall be deemed to meet such requirements for such fiscal year. A local educational agency shall not be required to apply the provisions of paragraph (c) of this section to a school attendance area described in the preceding sentence. Neither of such two preceding fiscal years shall be earlier than fiscal year 1975.

(20 U.S.C. 241e(a)(13); Senate Rept. No. 93-1026, p. 144 (1974))

(h) *Services to certain public schools in nonqualifying school attendance areas.* The purpose of section 101(a)(3)(A) of Pub. L. 93-380 amending section 141(a)(1)(A) of Title I is to allow local educational agencies to designate for projects, those schools which would otherwise qualify on the basis of their own enrollments but do not qualify because they are not located in an attendance area with large numbers of children from low-income families. Therefore, at the discretion of a local educational agency, notwithstanding any other provision of this section, Title I services may be provided for educationally deprived children enrolled in a school of such agency although the attendance area of that school does not qualify under this section if the percentage or number of children from low-income families in average daily attendance at that school is at least as high as the districtwide average percentage or number required for eligibility on an attendance area basis in accordance with paragraph (b) of this section.

(20 U.S.C. 241e(a)(1)(A); House Rept. No. 93-805, p. 16-17 (1974))

§ 116a.21 Needs assessment.

The application by a local educational agency under this part shall contain sufficient information and documentation to enable the State educational agency to determine that the applicant local educational agency has taken the steps in making a needs assessment described as follows:

(a) *Review of existing data.* The local educational agency has reviewed appropriate existing data, including past evaluations of Title I projects in that local educational agency, and data on the performance in the agency's basic programs of instruction of children residing in all eligible attendance areas. This must be done to determine the incidence and severity of educational deprivation among all children residing in an eligible attendance area. Such children shall include children enrolled in private schools, preschool children, children of school age not enrolled in a school, children in local institutions for neglected or delinquent children, as well as children enrolled in a public school.

(b) *Selection of project areas, target groups, and the needs to be served.* The local educational agency, on the basis of its findings from the review conducted under paragraph (a) has selected: (1) The project areas (in accordance with the procedures of § 116a.20); (2) The age or grade levels at which it will operate the Title I project (or projects); and (3) The types of educational needs to be addressed by these projects.

(c) *Identification of all target group children.* The local educational agency, using appropriate data and specified criteria, has identified all of the educationally deprived children in the project areas, who are in the age or grade levels and have the types of educational needs identified in accordance with paragraph (b).

(d) *Identification of children most in need.* The local educational agency has secured any additional objective data which, in combination with the existing data specified in paragraph (a), will enable it to identify which of the educationally deprived children identified in paragraph (c) are most in need of special assistance.

(e) *Selection criteria.* The local educational agency has set forth specific criteria by which the educationally deprived children residing in the project area and all children in institutions for neglected or delinquent children counted for payment under this part will be chosen to receive Title I services. Educationally deprived children chosen may include those identified as having the greatest need in accordance with paragraph (d) and those residing in a project area who participated in a project conducted in the previous year (if such children are still educationally deprived). A child may not be excluded from participating in a project because he or she is not from a low-income family or not attending school at the time.

(f) *Diagnostic procedures.* The local educational agency has used adequate diagnostic procedures to determine the special educational needs of the children chosen to be served in a Title I project.

(g) *Consultation.* In making the determinations under this section, the local educational agency has, to the extent feasible, consulted with teachers, parents, and persons knowledgeable of the needs of private and public school children and children in local institutions for neglected or delinquent children.

(20 U.S.C. 241e(a), (1), (2), and (6); House Rept. No. 93-805, p. 20-21)

§ 116a.22 Project description, size, scope, and quality.

(a) *Project description.* Each application for one or more projects under this part shall contain a description of the project in sufficient detail to enable the State educational agency to make the determinations detailed in paragraph (b) of this section. This description shall include:

(1) The educational objectives of the project and the relationship of these objectives to the special educational needs identified by the diagnostic procedures required by paragraph (f) of § 116a.21;

(2) The resources (including the type of staff and materials) to be used in the implementation of the projects and plans for their use;

(3) The time periods and instructional settings for the project services;

(4) The number of the children to be served and a general description of their special educational needs;

(5) The approaches, methods, and techniques that will be used to evaluate the success of the project in attaining its objectives;

(6) A budget detailing the expenditures required for the implementation of the project;

(7) The special educational needs and number of children, if any, who reside outside the project area and who will participate, as well as the manner of their participation; and

(8) Specific provisions for informing and consulting with parents concerning the services to be provided for their children under Title I, the performance of their children and the ways in which such parents can assist their children in realizing the benefits those services are intended to provide.

(b) *Size, scope, and quality.* A State educational agency shall not approve a project for which an application has been made unless it determines that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. Such a determination shall be made only if the State educational agency finds that:

(1) The educational objectives of the project are adequately related to one or more of the special educational needs of the participating children as identified in accordance with § 116a.21;

(2) The resources to be used in the project and the plans for their use are consistent with and show reasonable promise of meeting the objectives of the project;

(3) The evaluation plans comply with § 116.43 and are adequate for measuring the attainment of the objectives described in subparagraph (a)(1) of this section;

(4) The expenditures for the project (as set forth in the budget) are:

(i) At least $2500 or a lesser amount as may be set by the State educational agency, in accordance with section 141(a)(1)(B) of Title I, upon its determination that it would be impracticable (for reasons such as distance or difficulty of travel) for the applicant to join effectively with other local educational agencies for the purpose of meeting that dollar requirement;

(ii) Not imprudent, extravagant, excessive, or wasteful; and

(iii) Proposed for use solely to meet the special educational needs of educationally deprived children identified in accordance with § 116a.21;

(5) The project is concentrated on a sufficiently limited number of services for a sufficiently limited number of educationally deprived children, identified in accordance with § 116a.21, to show reasonable promise of meeting the educational objectives identified in subparagraph (a)(1) of this section;

(6) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of schools or of the student body at large in a school or of a specified grade in a school;

(7) Any services or resources provided under Title I will be offered to only those children who have been selected to participate in the project in accordance with § 116a.21, except as approved in accordance with paragraph (b)(8);

(8) If services are provided in the regular classroom or in other settings in which children other than those properly selected to participate in the project will be presented, these services will be directed to the selected children and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate;

(9) If educationally deprived children residing outside the project area will participate: (i) These children will meet

the criteria other than residency for participation in the project; (ii) Their participation will not result in the exclusion of children from the project area who meet these criteria; (iii) The project will have been designed solely for the selected children from the project area; and (iv) Participation of children from outside the project area will not impair the effectiveness of the project and will not result in any extra cost; and

(10) Services are equitably provided to all children with State and local funds without regard to the availability of Title I funds in the applicant's schools for the educationally deprived children.

(20 U.S.C. 241e(a)(1), (b) and 241j)

§ 116a.23 Participation by children enrolled in private schools.

(a) *General requirement.* Each local educational agency shall provide special educational services designed to meet the special educational needs of educationally deprived children residing in its school district who are enrolled in private schools. Such educationally deprived children shall be provided genuine opportunities to participate therein consistent with the number of such educationally deprived children and the nature and extent of their educational deprivation. The special educational services shall be provided through such arrangements as dual enrollment, educational radio and television, and mobile educational services and equipment. Such opportunities shall be made available to those educationally deprived children who reside in the public school attendance area or areas designated as the project area. If it is not practicable to apply a project to children enrolled in private schools because they are enrolled in a private school located in another school district, the applicant may make arrangements for such children with the local educational agency serving such other school district, including where appropriate, the making of a joint project application.

(b) *Determination of needs, number of children, and types of services.* The needs of educationally deprived children enrolled in private schools, the number of such children who will participate in the program, and the types of special educational services to be provided for them shall be determined, after consultation with persons knowledgeable of the needs of these private school children, on a basis comparable to that used in providing for the participation in the program by educationally deprived children enrolled in public schools.

(c) *Nature and comparability of services.* If, after consultation with persons knowledgeable of the needs of private school children, the local educational agency determines that it is necessary, in order to meet the special educational needs of eligible private school children, services and activities may be provided to such children which are different from those provided to public school children. However, consistent with the principles set forth in § 116a.22 of this subpart, those services and activities must be comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equally high priority.

(d) *Design of projects.* The opportunities for participation by educationally deprived children in private schools in the program of a local educational agency under Title I shall be provided through projects of the local educational agency which furnish special educational services that meet the special educational needs of such educationally deprived children rather than the needs of such schools or the student body at large or of children within a specific grade. Provisions for serving children in private schools shall not include the financing of the existing level of instruction in the private schools. The application shall contain sufficient information to enable the State educational agency to determine that, with respect to children enrolled in private schools, the requirements of § 116a.21 have been satisfied, and such application shall state the number of such children who were found to be educationally deprived according to specific criteria, the number of such children who are expected to participate in each of the services under Title I and the degree and manner of their expected participation.

(e) *Avoidance of separate classes.* Any project involving the participation at the same site of children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid classes which are separated by school enrollment or religious affiliation of the children.

(f) *Limitations on availability of services in other than public school facilities.* Public school personnel may be made available on other than public school facilities only to the extent necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, school breakfasts for poor children, and guidance and counseling services) for those educationally deprived children for whose needs such services were designed and only when such services are not normally provided by the private schools. The application for a project including such special services shall provide satisfactory assurance that the applicant will maintain continuing administrative direction and control over those services and, in accordance with § 116.36, over the use of equipment required to provide such services. Provisions for special educational services for educationally deprived children enrolled in private schools shall not include the paying of salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the construction of private school facilities.

(g) *Other requirements.* Special educational services and arrangements provided under this section shall meet the requirements of clauses (A) and (B) of section 141(a)(1), section 141(a)(2), and clauses (A) and (B) of section 141(a)(3) of Title I.

(20 U.S.C. 241e(a) (1), (2), and (3) 241e-1 (a); *Wheeler v. Barrera*, 417 U.S. 402 (1974))

§ 116a.23–1 Waiver of requirements for participation by children enrolled in private schools.

(a) *Approval of applications.* The State educational agency shall not approve an application for a grant for a program that does not meet the requirements of § 116a.23 of this subpart unless and until a final determination to waive such requirements has been made by the Commissioner pursuant to section 141A of Title I and satisfactory arrangements have been made for the provision of such services by the Commissioner under this section. The State educational agency shall notify the Commissioner that an application has been disapproved because of the local educational agency's failure to meet the requirements of § 116a.23 and set forth the reasons and supporting evidence for such disapproval.

(b) *Waivers in cases of legal prohibition.* If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by sections 141(a)(2) and 141A(a) of Title I and § 116a.23 of this subpart, the Commissioner will waive such requirement and the provisions of section 141(a)(2) and will arrange for the provision of services to such children through arrangements which shall be subject to the requirements of section 141A(a) of Title I. For the purpose of determining whether a local educational agency is prohibited by law from providing for participation of educationally deprived children in private schools, the Commissioner may require the State educational agency to furnish an opinion of the Attorney General of the State with regard to the status of State law regarding such participation.

(c) *Waivers in cases of substantial noncompliance.* (1) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation, on an equitable basis, of educationally deprived children enrolled in private elementary and secondary schools (as set forth in an approved application) as required by section 141(a)(2) and 141A(a) of Title I and § 116a.23 of this subpart, he shall make arrangements for the provision of services to such children, which shall be subject to the requirements of section 141A(a) of Title I, upon which determination the provisions of such section and section 141(a)(2) of Title I shall be waived.

(2) Where a local educational agency, pursuant to an application approved under this Part, undertakes to provide for the participation, on an equitable basis, of children enrolled in private elementary and secondary schools (as required by Title I and § 116a.23 of this Part) and such agency thereafter reduces the size, scope, or quality of the services provided such children prior to

(i) a final determination by the Commissioner to waive such requirement and (ii) the implementation of satisfactory arrangements for the provision of such services by the Commissioner under this section, no obligations or expenditures incurred by such agency may be recognized as allowable under Title I for the period during which such reduction of services takes place.

(d) *Cost of arrangements by Commissioner.* When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allocation or allocations under Title I. In the case of arrangements under this section, such allocation shall be the allocation of the local educational agency affected, and at the discretion of the Commissioner, the proportionate amount of State administrative funds, except that no State may receive less than $150,000 as provided by § 116.4.

(e) *Notice, opportunity for hearing, judicial review.* (1) The Commissioner shall not take any final action under this section until he has afforded the State educational agency and local educational agency affected by such action at least sixty days notice of his proposed action and an opportunity for a hearing with respect thereto on the record.

(2) If a State or local educational agency is dissatisfied with the Commissioner's final action after a hearing under paragraph (e)(1) of this section, it may, within sixty days after notice of such action, file, with the United States Court of Appeals for the circuit in which such State is located, a petition for review of that action in accordance with the provisions in section 141A(b)(4) of Title I.

(20 U.S.C. 241e-1)

§ 116a.24 Bonus pay for teachers.

(a) *General.* An application for a grant for a project under Title I may include, as a part of the applicant's program, provision for the payment of bonuses to teachers in a limited number of schools serving attendance areas with exceptionally high concentrations of children from low-income families.

(b) *Definition.* For the purposes of this section, the term "teacher" means a person holding a teaching certificate in the State who has a regular instructional assignment and is taken into account in the computation of pupil-teacher ratios in the State.

(c) *Eligibility of teachers; amount of bonuses.* The eligibility of teachers for such bonuses may be made subject to such conditions, including the completion of prescribed courses of special training, as may be set by the local educational agency with the approval of the State educational agency. Such bonuses must be reasonable in amount but must be deemed (by the approving State educational agency) to be sufficient to attract to, or retain at, such schools the teachers best qualified to help meet the special educational needs of the educationally deprived children to be served by the program of the local educational agency.

(d) *Application.* (1) A project application that includes provision for the payment of teacher bonuses must demonstrate that the applicant's regular salary schedule has not attracted or has not retained sufficient numbers of teachers of high caliber in the area in which the teacher bonus provision is to be made applicable. It must also demonstrate how the local educational agency plans to recruit, hire, provide inservice training to, and evaluate all teachers who will receive bonuses, and how such teachers will serve as an integral part of the Title I program.

(2) The continuation of the payment of teacher bonuses by a local educational agency beyond a two-year period shall be conditioned upon a demonstration in project applications for subsequent years that bonus payments in the school district have in fact been effective in attracting and retaining teachers of high caliber and that such teachers have significantly contributed to improving the performance of educationally deprived children. For this purpose, the State educational agency must assume a special responsibility for monitoring and evaluating teacher bonus components of programs in the light of specific measurable goals and must collect and maintain data on the extent of the use and the effectiveness of such teacher bonus components of programs under Title I.

(20 U.S.C. 241e(a)(1))

§ 116a.25 Parent advisory councils.

(a) *General requirements.* Each local educational agency shall demonstrate in each annual application submitted under this subpart that it has established an advisory council (hereinafter "district advisory council") for the entire area to be served under Title I and, except as provided in paragraph (f) of this section, an advisory council for each school of such agency served by the program or project set forth in the application (hereinafter "school advisory council"). Such agency may establish intermediate councils for groups of schools within its school district. The purpose of the advisory councils is to encourage parental involvement at the local level as an important means of increasing the effectiveness of programs under Title I. The application of such agency shall demonstrate that the district advisory council, each intermediate council, and each school advisory council, in accordance with the provisions of this section:

(1)(i) Has, as a majority of its members, (A) parents of children (including parents of private school children) who are currently participating in the program or (B) parents of children who will participate in the projects proposed for the following fiscal year, if satisfactory data is available to identify such children.

(2)(i) In the case of a districtwide or intermediate advisory council, is composed of members selected by the parents in the school attendance areas designated as project areas, and (ii) in the case of a school advisory council, is composed of members selected by the parents in the school attendance area of such council;

(3) Has been given responsibility for advising the local educational agency in the planning, implementation, and evaluation of, such program or project;

(4) Is provided by such agency with access to appropriate information concerning such program or project;

(5) Operates under procedures which are adequate to insure timely and proper performance of its functions, including procedures for convening meetings, and for the recording and maintenance of minutes; and

(6) Has been provided with procedures for coordinating its functions and its recommendations to the local educational agency with those of other councils in the district.

(b) *Participation of parents in selection of councils.* All of the parents of children eligible to attend a public school serving a project area, including parents of children living in such area and enrolled in private schools, shall be eligible to participate in the selection of members of the appropriate district and intermediate councils and the school advisory council of that school.

(c) *Identification of parents eligible for membership.* In consultation with the district advisory council, the local educational agency shall establish appropriate procedures whereby parents of children who are currently participating in a project or who will be participating in the proposed project be identified so that they may be considered for membership on a school, intermediate or district advisory council. In no case may parents be identified, for the purposes of this subsection, unless they have first given their consent to be so identified.

(d) *Procedure for selection.* The local educational agency, after consultation with the district advisory council, shall establish appropriate procedures for the nomination and selection of parents eligible under paragraph (c) and other persons for service on district, intermediate and school advisory councils. Such procedures shall include provision for affording timely and adequate notice to the parents and the general public in the agency's school district (or in the appropriate school attendance area in the case of a school council) of the time, place, and method whereby such selection would be made. The local educational agency shall take appropriate measures, such as the publication of the notice in a language other than English, to insure that adequate notice is provided for parents in an area where the dominant language is other than English. Upon the selection of members of the council, the names of all members of such council shall be made available to the public through appropriate notices and continue to be available upon request. Members of an advisory council shall be residents of the school district, and members of a school council shall reside in the attendance area of that school.

(e) *Membership of districtwide or intermediate councils.* The local educational agency may provide that the membership of its districtwide or intermediate advisory councils will be composed solely of members of the school councils, each member of which is elected by his or her school council.

(f) *Local educational agencies with one school or less than 1,000 students in all project area schools.*

If a local educational agency (1) has less than 1,000 students enrolled in its project area schools, or (2) has only one project area school, it may decide, with the approval of the State educational agency to have its district advisory council also serve as its school councils. In any such case the district council shall consist of at least one advisory council member representative of each project area school.

(g) *Involvement of councils.* Each local educational agency shall include in its application sufficient information to enable the State educational agency to make the following determinations:

(1) That each council member has been furnished copies of Title I of the Act, the Federal regulations, guidelines and criteria issued pursuant thereto, State Title I regulations and guidelines,

(2) That all council members will receive appropriate training materials and orientation which will assist them in carrying out their functions under this section; and

(3) That each council will be provided with the local educational agency's current application, other information and documents (such as prior applications in accordance with the availability of information to the public pursuant to § 116.45 for Title I projects and evaluations thereof) as may be needed for the effective involvement of each such council in the planning, implementation, operation, and evaluation of projects under Title I;

(4) That each council has had an adequate opportunity to consider the information available concerning the special educational needs of the educationally deprived children residing in the project area (or areas), and the various programs available to meet those needs, and to make recommendations concerning those needs which should be addressed through the Title I program and similar programs; and

(5) That all parents of children to be served have had an opportunity to present their views concerning the application to the appropriate school council, and that each council has had an opportunity to submit its comments to the local educational agency which shall consider such comments in determining whether or not the application shall be approved and submitted to the State educational agency.

(h) *Additional rules and procedures.* The State educational agency may establish such additional rules and procedures, not inconsistent with the provisions of this section, as may be reasonably necessary to insure the involvement of parents and the proper organization and functioning of parent advisory councils.

(20 U.S.C. 241e(a)(8), (14), 1231d H. Rept. 93-805, p. 18-19 (1974))

§ 116a.26 Comparability of services.

(a) *State agency action regarding applications.* A State educational agency shall not approve an application of a local educational agency for a grant under section 141(a) of Title I, or make payments of Title I funds under a previously approved application of such agency, unless that local educational agency has demonstrated, in accordance with paragraph (e) of this section, that services provided with State and local funds derived from public sources in Title I project areas are at least comparable to the services being provided with such State and local funds in schools serving attendance areas not designated as Title I project areas. Such approval shall not be given unless the local educational agency also provides the assurances and the additional information required by paragraph (h) of this section with respect to the maintenance of comparability. For the purpose of this section, State and local funds include those funds used in the determination of fiscal effort in accordance with § 116.19.

(b) *Reports by local educational agencies.* The State educational agency shall require each local educational agency (except as provided in paragraph (l) of this section) to submit a report in such form as the Commissioner will prescribe, containing the information required by the State educational agency to make the determinations specified in paragraph (e) of this section. Such report shall include the following data for each public school serving a project area (in whole or in part) unless such school is exempted by paragraph (k) of this section, and on a combined basis, for all other schools of corresponding grade levels (as grouped in accordance with paragraph (i) of this section):

(1) The number of children enrolled. For this purpose, children enrolled in kindergarten may be counted on a full-time equivalency basis. Additionally, if the governing body of a State or a local educational agency has mandated in law or local ordinance that State and local funds shall be expended at different rates for children in certain educational categories, age groupings, or grade levels, then the number of such children enrolled for the purpose of the local educational agency's comparability report may, with the approval of the State educational agency, be derived by multiplying the actual number of children enrolled by the rate specified for each such category, age grouping or grade level.

(2) The full-time equivalent number of certified and noncertified instructional staff members, who are paid with State or local funds regularly assigned to such public school or schools;

(3) The total amount of State and local funds being expended on an annual basis for salaries for such instructional staff members less the amount of such salaries based on length of service (longevity);

(4) The number of enrolled children as reported under subparagraph (1) of this paragraph per instructional staff member as reported under subparagraph (2) of this paragraph;

(5) The amount expended per enrolled child as reported under subparagraph (1) of this paragraph for salaries for instructional staff as reported under subparagraph (3) of this paragraph; and

(6) The number of children and of members of instructional staff and expenditures for such staff, if any, that were excluded from determinations in accordance with paragraph (j).

The term "instructional staff members" as used in this section means staff members who render direct and personal services which are in the nature of teaching or the improvement of the teaching-learning situation. The term includes teachers, principals, consultants, or supervisors of instruction, librarians, and guidance and psychological personnel; it also includes aides or other paraprofessional personnel including clerical personnel employed to assist such instructional staff members in providing such services.

(c) *Date as of which data must be collected.* The data required by paragraph (b) of this section shall be as of a date not later than November 1 of each fiscal year as specified by the State educational agency. To the extent practical such date shall be the date nearest October 1 as of which similar data, such as enrollment data, are required for reports to the State educational agency. The local educational agency with the approval of the State educational agency may, however, submit data based on averages for a definite regular school reporting period which includes the date specified by the State educational agency.

(d) *Date for filing report.* The report required by paragraph (b) of this section shall be filed with the State educational agency no later than December 1 of each fiscal year.

(e) *Determination of comparability.* The services being provided by the local educational agency with State and local funds in a Title I project area shall be deemed to be comparable to the services being provided with such funds in areas not being served under Title I, if the State educational agency determines that, for schools serving corresponding grade levels:

(1) The number of children enrolled per instructional staff member, reported in accordance with paragraph (b)(4) of this section, for each public school serving a Title I project area is not more than 105 percent of the average number of children per instructional staff member in all other public schools in the applicant's district; and

(2) The annual expenditure per child, determined in accordance with paragraph (b)(5) of this section, in each public school serving a Title I project area is not less than 95 percent of such expenditure per child in all other public schools in the applicant's district.

(f) *Action by State agency in cases of non-comparability.* (1) If any school serving a Title I project area is determined not to be comparable under paragraph (e) of this section, as of the date specified in accordance with paragraph (e) of this section, and the local educational agency does not submit a revised comparability report by December 1 of that year showing that comparability in accordance with this paragraph has been achieved, the State educational agency shall as of that December 1 suspend its approval of the project until the date such a report is submitted to that agency, provided the date of such submission is not later than the following March 31. Where such a report is filed by March 31, such suspension shall be lifted as of the date on which comparability has been achieved by such agency as shown in such report. Each revised report shall include all data required by paragraph (b), recorded as of a specific date on which the reallocation of resources has taken effect.

(2) If such a report is not submitted to the State educational agency by March 31, that agency, after notifying the applicant agency and providing it an opportunity for a hearing (in accordance with the provisions of § 116.6(b) of Part 116), shall finally disapprove the project and reallocate all unobligated funds in the applicant's allocation as of December 1 to other complying local educational agencies in the State in accordance with the provisions of § 116a.11 of this part.

(3) If the State educational agency finds that, as of a date after December 1, a local educational agency has failed to maintain comparability in accordance with paragraph (e) of this section and has not taken prompt action to correct that lack of comparability, the State educational agency shall, as of the date of such failure to maintain comparability, suspend its approval of the project until the date as of which such local educational agency (by means of a revised comparability report) demonstrates that comparability has been achieved. If such local educational agency fails to demonstrate compliance by March 31, the State educational agency shall revoke its approval of the project (subject to notice and opportunity for hearing) as of the date the local educational agency was found not to be in compliance and shall reallocate the balance of the unobligated funds to other complying local educational agencies in the State.

(4) No Title I funds may be used to pay for obligations incurred by a local educational agency during a period of suspension under this section.

(g) *Special reports regarding migratory children.* (1) For the purpose of this section, the Commissioner may designate those local educational agencies which enroll substantial numbers of migratory children of migratory agricultural workers and migratory fishermen from which a State educational agency shall secure special reports. Each such report shall be in the form prescribed in paragraph (b) of this section and the data provided shall be as of the date prescribed by the Commissioner.

(2) Such date will be selected on the basis of the best available information indicating when the highest concentration of migratory children of migratory agricultural workers or migratory fishermen in the school district of the local educational agency is most likely to occur. The Commissioner will also designate the date such a special report shall be submitted to the State educational agency and by that agency to him.

(3) The State educational agency shall determine on the basis of such special report whether the local educational agency is providing comparable services in project areas in accordance with paragraph (e) of this section and shall take such action as may be required by paragraph (f) of this section.

(h) *Assurances and data filed by local educational agencies.* On or before July 1 of each year each local educational agency shall file with the State educational agency:

(1) An assurance that the comparability of services previously demonstrated with respect to Title I project areas in accordance with paragraph (e) of this section will be maintained in all such areas, including areas serving migratory children of migratory agricultural workers or migratory fishermen, that will be designated as Title I project areas for the next fiscal year;

(2) Data on schools serving attendance areas, if any, that will be designated for Title I projects for the next fiscal year but were not designated for such projects in the preceding fiscal year. Such data shall show either that such schools would have been comparable during the preceding fiscal year if those areas had been designated for projects or will, as the result of specific action by the local educational agency, be comparable during the next fiscal year; and

(3) A statement of the specific policies and procedures adopted by the local educational agency to assure that textbooks, library resources, and other instructional materials and supplies are provided for each school serving a Title I project area on a basis that is comparable to that for non-project areas.

(i) *Grouping of schools.* (1) For the purposes of this section, a local educational agency shall group its schools by corresponding grade levels not to exceed three such groups (generally designated as elementary, intermediate or junior high school, and high school or secondary) for all the schools in the school district of such agency, except that local educational agencies providing education at seven or fewer grade levels above kindergarten shall be limited to one group, and those agencies providing education only at eight or nine grade levels above kindergarten shall be limited to two groups. In the case of agencies providing education at any level from grades six through twelve but only at those levels, the number of such groups shall be limited to two if the number of such grade levels is five or six and to one group if the number of such grade levels is four or less.

(2) A school serving grades in two or three such groups shall be included in that group with which it has the greatest number of grades in common. Where the number of grades in common are equal between two or more groups, the school shall be included in the lower grade division. For example a local educational agency might have the following grade span organization: K–6 (elementary), 7–9 (junior high), and 10–12 (senior high). In addition, the local educational agency might have an intermediate school serving grades 5–8. Since this intermediate school has two grades in common with the elementary division (grades 5 and 6) and two grades in common with the junior high division (grades 7 and 8), it would be included in the lower grade division (elementary) for determining comparability.

(3) Local educational agencies having schools serving eight or more grades above kindergarten may consider such schools to be a separate group in addition to the number of groups determined under subparagraph (1).

(4) If, for a particular grade span, one school has an enrollment that is at least two times that of another, the local educational agency may divide such schools in that grade span into two groups; one for the schools with the larger enrollments and one for the schools with the smaller enrollments, except as provided in the following sentence. Local educational agencies having schools with enrollments of 100 or less shall exclude such schools in making a determination of the size of the smallest school.

(20 U.S.C. 241e(a)(3))

(j) *Exclusions from determinations in certain cases.* (1) In cases where handicapped children (as defined in § 121.2 of this chapter) or children with specific learning disabilities (as defined in § 121.2 of this chapter) are enrolled full time in special education classes, and where children of limited English speaking ability are enrolled full time in special programs of bilingual education, all those children, the teachers and other instructional staff members who serve them, and instructional expenditures for such staff may be excluded by the local educational agency (at its option) in determining the comparability of services provided in project areas.

(2) Subject to the provisions of paragraph (j)(3) of this section, a local educational agency may (at its option) exclude from determinations under this section, expenditures of State and local funds for (i) programs of bilingual education for children of limited English-speaking ability or (ii) special programs for handicapped children where such children of limited English-speaking ability or such handicapped children do not participate in such programs on a full time basis and may also exclude the staff employed with such State and local funds. If expenditures for staff and numbers of staff are excluded in accordance with the preceding sentence, then the full time equivalent number of children served under such programs may also be excluded.

(3) In order to make the exclusions as provided for in paragraph (j)(1) and

(j) (2) of this section, a local educational agency must demonstrate, to the satisfaction of the State educational agency, that the services provided with such State and local funds to such children of limited English-speaking ability or handicapped children who reside in Title I project areas are comparable to such services provided to similarly disadvantaged children in nonproject areas.

(4) For the purposes of this section, the term "program of bilingual education" means a program of instruction designed for children of limited English speaking ability.

(5) State and local funds expended for State and local programs similar to programs provided under Title I for educationally deprived children and the number of full time equivalent instructional staff members employed through the use of such funds may, at the option of the local educational agency, be excluded from determinations under this section. For the purpose of this section a State or locally funded program for educationally deprived children shall be considered to be similar to programs under Title I if (i) the participating children are "educationally deprived" children as defined in § 116.2 of Part 116; (ii) the program is based on performance objectives related to educational achievement and provides supplementary services designed to meet the special educational needs of those particular children; (iii) the program is evaluated in a manner consistent with those performance objectives, and (iv) for purposes of determining compliance with clauses (i)-(iii) the local educational agency is separately accountable to the State educational agency for any State or local funds expended for such program.

(20 U.S.C. 241e(a) (1), and (3), 244(17); House Rept. 93-805, p. 18 (1974), Senate Rept. No. 93-1026, p. 147 (1974))

(k) *Schools with 100 or less children.* A school with an enrollment of 100 children or less (as of the date or dates the data required by paragraph (b) of this section are collected) shall not be included for purposes of this section, provided that, if the local educational agency operates schools of such size and corresponding grade levels both for areas to be served and areas not to be served under Title I, such agency files with the State educational agency a statement of the policies it will follow concerning the allocations of staff to such schools and the State educational agency finds that such policies are consistent with the objectives of this section.

(l) *Inapplicability to certain agencies.* The requirements of this section are not applicable to a local educational agency which has shown the State educational agency that it is operating only one school serving children at the grade levels at which services under Title I are to be provided or which has designated the whole of the school district as a project area in accordance with § 116a.20(d).

(m) *Maintenance of records.* (1) Local educational agencies required to report under this section shall maintain, by individual schools

(i) Appropriate resource records, including records of children's enrollment;

(ii) Worksheets showing the total number of full-time instructional staff members, the full-time equivalent number of part-time instructional staff members and the total amount of State and local funds being expended for their salaries (including the prorated portions of salaries for part-time staff) less the total amount of such salaries based solely on longevity;

(iii) Appropriate records documenting the exclusions made pursuant to paragraph (j) of this section; and

(2) Such records and worksheets, demonstrating the maintenance of comparability for the entire school year, shall be filed, indexed, and maintained in such a manner that they may be readily reviewed by appropriate local, State, and Federal authorities and shall be retained in accordance with applicable record retention requirements. All such records and worksheets shall be available to the public in accordance with the provisions of § 116.35.

(n) *State agency submissions.* (1) By January 1 of each year, the State educational agency shall submit to the Commissioner in such form as he will prescribe, a copy of the comparability report for each local educational agency in the State which the Commissioner has determined to be in a national sample of such agencies for that year.

(2) The State educational agency shall also submit to the Commissioner by January 1 of each year, a report identifying each local educational agency that failed to meet the comparability requirement of paragraph (e) of this section on the date specified under paragraph (d) or (g) of this section and indicating for each such agency either (i) that such agency has allocated or reallocated sufficient additional resources to Title I project areas so as to come into compliance with such requirements and has filed a revised comparability report reflecting such compliance or (ii) that the State educational agency is withholding the payment of Title I funds to the noncomplying local educational agency.

(3) A copy of each revised comparability report in such form as the Commissioner will prescribe shall be included with the State educational agency's report to be submitted by January 1.

(4) Not later than April 30, the State educational agency shall report to the Commissioner whether any noncomplying local educational agencies have come into compliance, and if so, the State educational agency shall include revised comparability reports for such local educational agencies reflecting such compliance.

(o) *Local educational agencies which receive substantial Federal funds.* A local educational agency receiving at least 95 percent of its funds for education from Federal sources shall not be required to meet the provisions of this section.

(20 U.S.C. 241e(a) (3))

[FR Doc.76-28162 Filed 9-27-76;8:45 am]

APPENDIX 3

Administration of Compensatory Education

A Report From the National Institute of Education

The National
Institute of
Education
U.S. Department of
Health, Education and Welfare
Washington, D.C. 20208

ADMINISTRATION OF COMPENSATORY EDUCATION

September 19, 1977

The National Institute of Education
U.S. Department of Health, Education and Welfare
Washington, D.C. 20208

PREFACE

The Compensatory Education Study on which this report is based was requested by Congress in the 1974 Elementary and Secondary Education Amendments. The 1974 Amendments emphasize the direct responsibility of the National Institute of Education (NIE) to the Congress. The study began in February of 1975 only after Congress had reviewed an official research plan submitted by NIE; it was funded with $15 million specially set aside from the Title I program appropriation. Results of the study will be reported directly to the President and to the Congress.

This direct responsibility to Congress led NIE to ensure that the study could be planned and integrated within the Institute. A special staff was established to conduct the study, and it was placed in NIE's Educational Equity Group. That staff has planned and closely managed the research on which this report is based and the 35 research projects that make up the whole compensatory education study.

This report reflects the efforts of many members of the NIE staff and contractors. Donald Burnes of NIE managed all of the research projects on which the report is based. Several other members of the Compensatory Education staff, especially Paul Hill, Iris Rotberg, and Alison Wolf, also contributed to the planning and analysis of the studies reported here.

Chapters I and II were written by Donald Burnes from documents supplied by Robert Silverstein of The Lawyer's Committee for Civil Rights Under Law, which conducted NIE's Survey of Legal Standards. Christopher Wheeler of NIE conducted the research on which Chapter III is based and wrote the chapter. Chapter IV was written by Donald Burnes and is based on findings from the Survey of Legal Standards and the Study of State Administration, which was conducted by Booz Allen and Hamilton, Inc., Syracuse Research Corporation, and Policy Research Corporation. Chapter V relies on information gathered at conferences between NIE and the coordinators of state compensatory education programs. It was written by Richard Moss and Paul Hill of

NIE. Special recognition is due to James Harvey and Alison Wolf of NIE for their contributions to the logic and integration of this report and to Van Ring and Janice Gallop for their assistance in typing the report.

The work of several other people outside NIE is reflected in this report. Chairman Owen Peagler of the National Advisory Council on the Education of Disadvantaged Children and the members and staff were generous with their time in advising on the execution of the study, as were a great number of education agencies and associations at the Federal, state, and local levels. The staff of the U.S. Office of Education has been unfailingly open and helpful throughout the study.

Members of the NIE staff too numerous to mention have offered expert advice on research and helped select contractors. Special thanks are due Patricia Graham, Michael Timpane, and Marc Tucker for their suggestions and contributions to this report.

Paul Hill, Director
NIE Compensatory Education Division

Iris Rotberg, Associate Director
NIE Compensatory Education Division

SUMMARY

The purpose of this report is to examine the administration of Title I. It reviews the actions of the Federal and state governments in using Title I funds to provide special educational services to educationally disadvantaged children in low-income areas.

The administration of Title I reflects our Federal system. The Federal government, States, and local educational agencies (LEAs) share responsibility for administration. Although the Federal Government can influence the actions of States and local governments, it cannot fully control them. The primary role of the Federal Government is to establish the rules under which the program operates; it also reviews the actions of States and LEAs to ensure that the rules are observed in practice. State governments are responsible for helping LEAs understand the Title I rules fully, and for overseeing district practices to ensure that funds are used as Congress intended. LEAs are responsible for identifying students in need of compensatory education and for delivering services to them.

This report concentrates on the administrative actions of the Federal and state governments. It analyzes the actions of the U.S. Office of Education (OE) in establishing the legal framework for the program and in monitoring and enforcing its proper implementation by States and LEAs. It also analyzes the actions of state governments in administering Title I and in operating compensatory education programs established by state legislatures.

NIE's analysis of the Federal legal framework for Title I included the Title I statute, official rules established by OE, and formal letters of advice to States and LEAs. It distinguished two kinds of requirements in the legal framework. Funds allocation requirements guarantee that Title I funds are used as Congress intended; program development requirements establish processes to ensure that the services delivered with Title I funds are carefully planned and evaluated.

NIE's research has identified some important strengths and weaknesses of the legal framework. The funds allocation requirements are necessary to guarantee that Title I funds will be used for the special purposes Congress intended. Because LEAs have strong incentives to use their grants for general aid or to defer tax increases, explicit funds allocation requirements are necessary.

The program development requirements are not necessary in the same sense as the ones governing funds allocation, because LEAs have little incentive to deliver poor or ineffective educational services. But these requirements do represent a reasonable effort to establish good planning and review procedures for local Title I programs.

The legal framework is consistent, both with the Title I statute and with itself. States and LEAs need not violate one requirement in order to fulfill another. However, the language of the framework is not clear enough to meet the needs of the state and local officials who implement the program. Understanding the legal framework requires a greater degree of legal scholarship or practical experience than many state and local officials have attained. This lack of clarity has serious consequences, because Title I coordinators who misunderstand the legal framework are likely either to violate its requirements or to adopt unduly restrictive policies.

The inconsistency of OE's day-to-day monitoring and enforcing of the legal framework further confuses States and LEAs about the exact meaning of their obligations under Title I. NIE studied Federal management of the funds allocation requirements that guarantee that Title I programs supplement the regular educational experiences of participating children. The study found that OE does not apply consistent standards in identifying violations of those guarantees. Federal officials in the field interpret the requirements differently, and the findings of Program Review Teams and official audits are often reversed by higher officials in the Office of Education. Due to an internal conflict about the proper Federal role in guaranteeing the supplementary use of Title I funds, the level of OE monitoring and enforcement of these provisions is declining. States and LEAs are not receiving consistent advice, and they are increasingly unsupervised in the use of Title I funds.

State governments also receive unclear guidance about their administrative responsibilities. The legal framework identifies some state functions explicitly, but only implies the existence of others. It is also unclear in setting the standards that States are to meet in performing their administrative functions. As a result, States have adopted widely different administrative policies, and some do not fulfill all of the responsibilities.

States also differ widely in their use of the administrative set-aside funds provided by Title I. Those States which use most of their administrative funds to hire staff are able to conduct frequent monitoring visits to LEAs and to provide advice on compliance and program development issues. States that use only a small part of their administrative funds for staff provide less direct guidance to their LEAs. The size of each State's administrative set-aside limits the absolute number of staff members it can hire, but the emphasis on staffing varies from State to State without respect to total funding. Some States with small set-asides have more staff members per dollar than States which have large amounts of funds for administration.

SEAs in one-third of the States administer their own compensatory education programs, as well as Title I. NIE studied state compensatory education programs, and obtained descriptions of the funding patterns and services that they deliver. State compensatory education programs generally complement Title I, either by extending compensatory services to more students or by providing additional services to children in Title I programs. Most state programs operate smoothly in conjunction with Title I and rely on its administrative framework and staff for support. A few have slightly different funding objectives which are difficult to reconcile with the Title I legal framework. In general, however, state compensatory programs are effective partners with Title I, and their existence does not suggest the need for a change in Title I's objectives or administrative processes.

THE NIE COMPENSATORY EDUCATION STUDY

REQUEST FOR THE STUDY

The Education Amendments of 1974 (Public Law 93-380), the major education legislation of the 93d Congress, extended and changed the Elementary and Secondary Education Act (ESEA) of 1965 and extended other Federal education programs, including the Education of the Handicapped Act and the Adult Education Act, as well as the impact aid, Indian education, and emergency school aid programs.

The law also directed various Federal agencies to conduct studies and surveys so that Congress might have the benefit of more up-to-date and accurate information during its future consideration of legislation to assist elementary and secondary education. Among these directives is Section 821 of the Education Amendments, which instructs the National Institute of Education (NIE) to conduct a study of compensatory education, including compensatory programs financed by States and those funded under authority of ESEA Title I.

Compensatory education includes a number of Federal and state programs in addition to ESEA Title I. The relative size, scope, and long history of Title I mark it as the most important of the compensatory education programs. In order to ensure adequate depth and scope for the study, NIE chose to focus most of its attention on Title I. In 1977, that title, the largest Federal education effort at the elementary and secondary level, provided over $2 billion, most of which was used to fund educational programs for low-achieving students in school districts serving children from low-income families.

Specifically, Section 821 instructs the Institute to conduct a study incorporating:

- An examination of the fundamental purposes and effectiveness of compensatory education programs

- An analysis of the ways of identifying children in greatest need of compensatory education

- An exploration of alternative ways of meeting these children's needs, including the use of written educational plans

- An examination of the feasibility, cost, and consequences of alternative ways of distributing Federal compensatory education funds

- Not more than 20 experimental programs for the purpose of examining the issues above

The relevant sections of the 1974 statute authorizing the study are reproduced in Appendix A.

Section 821 also directs the Presidentially appointed National Advisory Council on the Education of Disadvantaged Children to advise the Institute on the design and execution of the study.

Finally, the law, as amended by Public Law 94-482, requires NIE to submit interim reports to the President and Congress on December 31, 1976, and on September 30, 1977, and to submit a final report in September 1978.

LEGISLATIVE BACKGROUND

The breadth of the examination of compensatory education requested of NIE, ranging from the allocation of funds to specific instructional approaches, reflects a number of concerns which figured prominently during the 1974 Congressional consideration of the extension of ESEA Title I. Among these concerns were:

- The effects of altering the definition of poverty used in the Title I allocation formula

- The feasibility of using measures of student achievement rather than numbers of low-income children in the formula

- The possibility of requiring individualized programs of instruction for each student participating in a Title I program
- The merits of requiring school districts to spend as much as 85% of their Title I grants on basic skills instruction in reading and mathematics
- The relatively narrow focus of most prior efforts to evaluate the effectiveness of Title I

RESEARCH STRATEGY

Like the provisions which authorized the study, therefore, NIE's evaluation adopted a wide focus during its examination of compensatory education. Essentially, the Institute has interpreted the provisions of Section 821 as constituting two major requests from Congress. The first requires an assessment of the effectiveness of compensatory education programs in meeting their fundamental purposes; the second requires an examination of several alternatives which might improve the effectiveness of compensatory education programs.

In response to these requests, NIE developed a strategy designed to produce a complete understanding of how the Title I program operates in practice as well as how it might change if any of several alternatives were adopted. The strategy involved the examination of four major areas:

- Funds allocation
- Service delivery
- Student development
- Program administration

The study defined the first three of these areas as the "fundamental purposes" of Title I. The fourth was examined in order to determine how the administrative structure required to implement such a large education program promotes the achievement of the program's purposes as well as how program administration might be improved.

FUNDAMENTAL PURPOSES

To examine the fundamental purposes of compensatory education programs, it is necessary to distinguish the broad philosophical concerns that may have motivated the program's originators from the more concrete operational purposes that are built into the program.

The originators of compensatory education efforts, such as Title I, may have had in mind some very general objectives, including helping to eliminate poverty, contributing to the redistribution of wealth and opportunity, reforming education, and symbolizing society's commitment to helping the disadvantaged. Although it is possible to speculate about what their motivations might have been, the debates, statutes, and official legislative reports that established the program contain a specific set of fundamental purposes, which were described in some detail in the Institute's December 1976 publication, Evaluating Compensatory Education: An Interim Report on the NIE Compensatory Education Study. These purposes, clearly discernible in the statute and accompanying formal Congressional statements, are:

(1) To provide financial assistance to school districts in relation to their numbers of low-income children and within those districts to the schools with the greatest numbers of low-income students

(2) To fund special services for low-achieving children in the poorest schools

(3) To contribute to the cognitive, emotional, social, or physical development of participating students

These three goals of Title I are consistent with one another, but each is not equally important to all Members of Congress. Congressional debates, and even the language of different parts of committee and conference reports, suggest that

Members of Congress differ among themselves about the relative importance of the respective purposes. Some Congressional statements imply that the purposes form a hierarchy in which Title I delivers funds and provides services only to increase children's academic achievement (thus making the third the most important). Other statements, however, make it clear that the allocation of funds and delivery of services are important ends in themselves and may, in fact, define the practical limits of Federal action to promote the development of children.

STRATEGY FOR ASSESSING COMPENSATORY EDUCATION

The evaluation of Title I must start from the recognition that the program has several goals, and to focus exclusively on one, improperly ignores the others. Evaluation must also acknowledge that Title I operates through the Federal system and that state and local governments determine what it will be in practice. Although there is only one Federal Title I program, i.e., only one basic framework of laws and policies, it operates differently in every State, in 14,000 school districts, and in countless classrooms. Thus, to understand and evaluate Title I it is necessary to consider the ways in which Federal policy interacts with the actions of States and local educational agencies (LEAs) that actually implement the program.

The early national evaluations of Title I considered only the third goal--contributing to children's development--and often rendered judgments on the efficacy of the program without accounting for the diverse ways in which LEAs had implemented it. Those evaluations overlooked some important truths about Title I: it has several objectives, and under it LEAs deliver a range of services with a variety of aims and emphases to a diverse set of beneficiaries. In contrast to earlier evaluations, therefore, NIE's strategy is designed to (1) provide clear information about what Title I is accomplishing toward achievement of each fundamental purpose and (2) examine the implications of alternative ways of organizing the efforts of the Federal, state, and local governments to achieve these purposes.

THE REPORT

This volume is one of several intended to comply with the statutory requirement that a second interim report be completed not later than September 30, 1977. It presents the results of NIE's research on the administration of Title I by the Federal Government and the States.

Five additional reports will be published on the following topics:

- The compensatory services delivered by local educational agencies
- The effects of using counts of low-income children in allocating funds
- The feasibility, costs, and consequences of using counts of low-achieving children in allocating Title I funds to school districts
- The effects of using student achievement to allocate funds within school districts
- Student development in compensatory programs

CONTENTS

PREFACE . . . iii

SUMMARY . . . v

THE NIE COMPENSATORY EDUCATION STUDY . . . ix

CHAPTER I. OVERVIEW OF REPORT ON ADMINISTRATION . . . 1

CHAPTER II. FEDERAL RULEMAKING IN TITLE I . . . 5

  INTRODUCTION . . . 5
  DEVELOPMENT AND DISSEMINATION OF THE FEDERAL FRAMEWORK: THE RULEMAKING FUNCTION . . . 7
  Basic LEA Program Requirements in the Formal Legal Framework . . . 8
  Necessity of the Framework . . . 12
  Consistency and Clarity of the Legal Framework . . . 14
  Restrictiveness of the Framework . . . 19
  Effects of the Federal Framework on States and Districts . . . 21

CHAPTER III. FEDERAL MANAGEMENT: ENSURING THE SUPPLEMENTARY NATURE OF TITLE I . . . 23

  INTRODUCTION . . . 23
  OVERVIEW OF FEDERAL GOVERNMENT MONITORING AND ENFORCEMENT ACTIVITIES . . . 25
  The Legal Framework . . . 25
  Federal Procedures for Insuring the Supplementary Nature of Services . . . 27
  INCONSISTENCIES IN FEDERAL MANAGEMENT: CONFLICT WITHIN OE . . . 29
  DED's Position . . . 29
  Position of the Office of Associate Commissioner . . . 33
  The Underlying Factor: Disagreement Over the Federal Role . . . 35
  Consequences of the Disagreement . . . 37
  Decline in Federal Management Activity . . . 40

CHAPTER IV. STATE ADMINISTRATION . . . 45

  THE TITLE I LEGAL FRAMEWORK FOR STATE ADMINISTRATION . . . 46
  Rulemaking Authority . . . 47
  Enforcement Authority . . . 48
  Audit Procedures . . . 49
  Implications For Management . . . 50
  STATE MANAGEMENT . . . 50

Administrative Activities 51
Administrative Set-Asides 52
Use of the Set-Asides 53
Significance of State Staffing 54

CHAPTER V. STATE COMPENSATORY EDUCATION PROGRAMS 57

INTRODUCTION 57
STATE COMPENSATORY EDUCATION PROGRAMS 59
Funding Levels 60
Funding Mechanisms and District Eligibility Criteria 60
District Program Requirements 64
Services Provided 66
Administration 67
STATE PROGRAMS AS MODELS FOR THE IMPROVEMENT OF TITLE I 69
THE RELATIONSHIP BETWEEN STATE PROGRAMS AND TITLE I 70
Tensions Between State Compensatory Education Programs and Title I 71
Importance of Title I to State Programs 73
The Future of State Programs 74
CONCLUSION 74

APPENDIX A. SECTIONS 821 AND 150 OF PUBLIC LAW 93-380 77

APPENDIX B. RECOMMENDATIONS OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW 81

BIBLIOGRAPHY 85

LIST OF TABLES

1. SUPPLANTING ALLEGATIONS REPORTED IN PROGRAM REVIEW LETTERS, BY NUMBER 41

2. ADMINISTRATIVE SET-ASIDE PER STATE AND PER LEA, FISCAL YEAR 1976 53

3. NUMBER OF FTE PER $100,000 SET-ASIDE, FISCAL YEAR 1976 . . . 54

4. NUMBER OF FTE PER $100,000 SET-ASIDE--$150,000 SET-ASIDE VS 1% SET-ASIDE, FISCAL YEAR 1976 56

5. TITLE I AND SCE FUNDING LEVELS, FISCAL YEAR 1976 58

6. CHARACTERISTICS OF FORMULA-BASED SCE PROGRAMS 61

CHAPTER I. OVERVIEW OF REPORT ON ADMINISTRATION

Though Title I provides funding for local educational agencies (LEAs), it is not a simple program of grants to jurisdictions. Title I funds are distributed to LEAs, but their use is limited to special educational services for educationally disadvantaged children residing in low-income areas.

In order to guarantee that Title I funds are used as Congress intends, the program must be managed. Efforts to provide such management have led to considerable investment at Federal, state, and local levels. The administrative effort is smallest at the Federal level, which spends less than $5 million a year and employs 100 people in the U.S. Office of Education (OE). States employ approximately 1,000 persons in their Title I offices, and the 50 States received $20 million in Federal funds in fiscal year 1976 to cover administrative costs. The 14,000 school districts receiving Title I funds spent approximately $120 million on administration in fiscal year 1976, quite apart from their expenditures for services to disadvantaged children.

Much of the success of the Title I program depends on the quality of management at each level of government and on the nature of the interactions among the levels. Administration can play an important part in determining the effectiveness of Title I services. For example, funds are most likely to reach their intended beneficiaries when the procedures for allocation are clear and when funding is based on the most accurate and current poverty and achievement data. When LEAs have advance information about the level of funding they will receive, they are best able to plan and organize their services. Good technical assistance from OE and the States can assist local personnel with planning and developing quality services.

The management structure for Title I reflects the Federal system. Because of this intergovernmental structure, Federal policies are not always dominant. Congress exerts considerable influence on Title I at the Federal level. However, the Federal Government has less control over the way States administer the program. Local school districts are even further removed from direct Congressional influence.

The Federal Government has three mechanisms by which to provide direction to States and local districts. The first is the legal framework that establishes the program and administrative requirements for the operation of Title I. This framework is founded in the language of the Title I statute and in Congressional hearings, floor debates, and reports. The U.S. Office of Education elaborates on this foundation by issuing regulations and guidelines that govern the implementation of the program.

Congress also provides direction through its control of the funding process. Congress can determine the size of the program by establishing overall funding levels for Title I; it can also control the amount of money available for management. Funding for Title I administration is established in the regular appropriations process, and the formula for support of state administration is set in the Title I statute. Thus, through its control of funding, Congress can influence the nature and scale of administrative activities.

The third way in which the Federal Government provides direction is through its monitoring and enforcement activities. The Department of Health, Education, and Welfare (HEW) gives guidance about the meaning and importance of the provisions in the legal framework by the ways in which it gathers information about State and local district Title I practices, and it applies sanctions in cases of noncompliance.

The research conducted by the National Institute of Education (NIE) is intended to explore ways in which improvements can be made in Title I through modifications in the administrative process. It has four objectives:

- To describe the processes by which direction is provided to States and local districts regarding the implementation of Title I
- To assess the clarity and consistency of the direction that is provided
- To identify factors that affect the nature of the direction
- To assess the implications of alternative ways of administering Title I and to determine their likely effect on the direction provided and on the nature of Title I services

Chapters II and III examine Federal administration. Chapter II examines the development and dissemination of Title I's legal framework and the clarity and consistency of the guidance it provides to States and districts. Chapter III analyzes the activities that HEW administrators undertake to monitor and enforce compliance with the legal framework and the impact of these activities in the field.

Chapters IV and V report on state administration. Chapter IV analyzes stute efforts to administer the program. It studies the clarity of existing Federal requirements for state administration and examines the processes through which States provide guidance to LEAs. Chapter V examines state-funded compensatory education programs. It provides a description of those programs and analyzes their present and future relationships to Title I.

Like the whole Compensatory Education Study, NIE's research on administration is intended to explain the consequences of alternctive Congressional actions. The studies reported here are not strict evaluations of past or present administrators or even of the administrative process as a whole. The research in this report covers the present administration to find ways of improving the program. Throughout, the focus is on understanding how Congress can best use the resources it has in order to achieve the objectives it has set for Title I.

CHAPTER II. FEDERAL RULEMAKING IN TITLE I

INTRODUCTION

Title I is not a simple grant-in-aid program that provides general funding to States and local districts. Title I funds are specifically designated to be used for supplementary services for disadvantaged children in low-income areas.

In order to ensure that States and local districts understand and comply with the purposes of the program, the Federal Government develops and disseminates official policies about the implementation of the program.

HEW uses two principal methods in developing such policies and communicating them to States and local districts. The first method entails issuing general rules about program implementation. The second method consists of monitoring and enforcing compliance with the existing rules.

Under the rulemaking function, OE issues either "legislative" rules or "interpretative" rules. Legislative rules are defined as "rules . . .issued by an agency pursuant to statutory authority which implement the statute."[1] Such rules have the "full force and effect of law." For Title I, these rules include the regulations and mandatory criteria contained in guidelines developed by OE. This report uses the phrase "formal legal framework" to describe the legislative rules and the statutory provisions on which they are based.

OE also issues interpretive rules in implementing Title I. An interpretive rule is defined as a rule or statement issued by an agency to advise the public of the agency's practical interpretation of the statutes and rules that it administers. This report uses the phrase "interpretive legal framework" to describe statements contained in such documents as handbooks and correspondence between OE and individual States on matters of interpretation of the regulations.

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[1] Kenneth Davis, Administrative Law Text (St. Paul, Minn.: West Publishing, 1972), p. 126.

The second method utilized for disseminating policy is monitoring and enforcement. Under Title I, OE is required to verify that the rules are being followed and levy sanctions against violators. OE sends review teams to States and local districts to assess compliance with the regulations. In addition, the HEW Audit Agency periodically audits the fiscal integrity of the grant transactions and compliance with the rules.

In some cases, monitoring uncovers evidence of possible noncompliance. When this happens, OE assesses the evidence and makes judgments about whether the State or district is, in fact, out of compliance. Once noncompliance has been established, OE can apply fiscal sanctions as an enforcement mechanism.

Various documents which result from monitoring and enforcement also provide information to States and districts about the policies that OE and the Audit Agency are following. These documents include Program Review Letters, audit reports, Letters of Final Determination from audit hearings, responses to complaints, and positions taken before the HEW Audit Hearing Board (an independent office within HEW created to resolve controversies between OE and States and local school districts).

The purpose of this chapter and of Chapter III, which describes Federal administration, is to examine the nature of the direction that HEW provides to States and local districts. This chapter examines the policies that are communicated through the formal and interpretive legal frameworks. Chapter III analyzes the way in which OE and the Audit Agency monitor and enforce regulations.

Two major studies have provided most of the information on Federal management. Data on the Title I legal framework have been provided through the Survey of Legal Standards conducted by the Lawyers' Committee for Civil Rights Under Law. The analysis of monitoring and enforcement is based on the Study of Federal Administration conducted by NIE. Results of the Survey of Legal Standards are presented immediately below. A report on the Study of Federal Administration is presented in Chapter III.

DEVELOPMENT AND DISSEMINATION OF THE FEDERAL FRAMEWORK: THE RULEMAKING FUNCTION

Central to the study of program administration is an understanding of the way in which OE's formal and interpretive legal frameworks guide the implementation of the program. The rules contained in these frameworks specify the intended beneficiaries, require that program funds are used to provide special educational services, and establish processes which LEAs should follow in delivering services. The rules also define the administrative activities that state education agencies (SEAs) must perform in implementing the program.

To examine the formal and interpretive frameworks, NIE contracted with the Lawyers' Committee for Civil Rights Under Law to conduct the Survey of Legal Standards. The survey included an indepth analysis of the major program requirements for local districts and the administrative responsibilities for States. Both the funds allocation and the program development regulations were examined to see whether they were (1) necessary to accomplish Title I's statutory objectives; (2) consistent with the statute, and also internally consistent; (3) clear and easily comprehensible; and (4) unduly restrictive of districts' flexibility. Separate volumes contain the complete findings of the survey in each area.[2]

Before examining the necessity, clarity, and restrictiveness of the Federal legal framework, it is important to have some understanding of the basic program requirements which guide local district behavior. The following pages describe them briefly.

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[2] Silverstein and Schember, 1977; Silverstein, 1977; Gaffney et al., 1977; Silverstein et al., 1977a, 1977b.

Basic LEA Program Requirements in the Formal Legal Framework

In enacting Title I, Congress made the following declaration of policy:

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children.

Section 141 of Title I expands upon the general instruction cited in the Declaration of Policy and makes school district eligibility for Title I grants contingent upon assurance that funds will be used for programs: (1) designed to meet the "special educational needs of children in school attendance areas having high concentrations" of low-income children, and (2) of "sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting those needs." In addition, the same section requires assurance that Title I funding supplement rather than supplant non-Federal funding available for Title I students, and "to the extent practical, increase the level of funds that would be made available for the education of pupils participating" if Federal funds were not available.

Title I also requires that services provided with state and local funds be comparable in Title I and non-Title I schools, and that Title I funds be used only for the excess costs associated with Title I programs and projects. These provisions are the basis for the Title I rules issued by the Office of Education.

The formal legal framework contains 14 major program requirements governing either funds allocation or program development. The funds allocation requirements are intended to ensure that Title I funds are used for the intended beneficiaries and that state and local funds are distributed so that Title I dollars actually add to expenditures for the target population. The program development requirements establish the nature of services to be provided at the local level and procedures for guaranteeing their quality.

Funds Allocation Requirements.--Of the eight major requirements governing funds allocation, two, eligibility and targeting, are concerned with the selection of schools and students who would benefit from the use of Title I funds. The remainder are designed to insure that Title I funds are, in fact, used to provide special services for the target population.

Eligibility criteria delineate which school districts are eligible to receive assistance under Title I, define eligible schools as those with attendance areas having high concentrations of children from low-income families, and identify the class of potential recipients as children who are educationally deprived.

The targeting standards determine which of the eligible areas and children will in fact be served.

Of the six remaining funds allocation requirements, the general aid provisions serve as a broad direction to school districts requiring them to serve only "educationally deprived" children with Title I funds and not the student body at large. The regulations that elaborate the other five requirements provide more specific guidance to school districts on the allocation and use of funds. They give practical definition to the supplement not supplant, comparability, and excess cost provisions of the statute. These regulations vary according to whether they apply on the district, school, or student level, and whether they refer to funds or to services.

Maintenance of effort provisions apply to district-level expenditures and require that funding from state and local sources does not decrease. Without such provisions, States or districts could substitute Title I dollars for their own money and maintain the same level of overall educational expenditures. The requirement is designed to ensure that Federal assistance serves a supplemental rather than a basic education function and that Title I grantees not shift ongoing financial responsibility for basic education programs to the Federal Government.

Comparability requirements apply at the school level to the services provided from state and local funds. Generally, they require that the level of these services in every Title I school be comparable, i.e., roughly equal, to the average level in non-Title I schools. They are designed to insure that Federal assistance is not used to support a level of services that is already available in non-Title I schools in the district. Comparability is generally measured in terms of two ratios: pupil to staff and expenditures per pupil for instructional salaries.

Supplement not supplant requirements apply at the child level and to the use of funds.[3] They are intended to insure that Title I funds are added to, and not used to replace, state and local funds. Children in Title I programs must receive the level of state and local funds they would have received if Title I did not exist.

The supplanting provisions of the statute and the regulations add significantly to the restrictions on local spending behavior contained in the maintenance of effort and comparability requirements. Maintenance of effort refers to district-level expenditures, while the comparability requirements relate to services provided at the school level. The supplanting provision, in contrast, requires that Title I funds be used to provide supplementary programs for individual, educationally disadvantaged children.

The excess cost requirement clarifies the supplanting provisions by stipulating that Title I funds can pay only for the excess costs of Title I programs and projects. If, for example, a district is spending $1,000 per pupil for the regular academic program, and the local Title I program is designed to provide the same program at a more intensive level, Title I may pay only for the costs of the program that are in excess of $1,000 per pupil. The supplement not supplant and excess costs provisions are thus closely related. The supplanting provisions prevent LEAs from penalizing children in Title I programs when allocating state and local funds. The excess cost provision requires that Title I funds pay only the costs of services beyond normal instructional expenditures.

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[3] Prior to 1976, the supplement not supplant requirements applied also at the school level, i.e., to project areas. The portion of the provision that applied at the school level was deleted in the revised legal framework.

Equitably provided provisions, formerly termed "ordinarily provided," extend the comparability regulations from the school to the child level and use a different measure of services. The comparability requirements are met if broad tests, such as the ratio of pupils to staff in each Title I school are roughly equal to the average pupil/staff ratio in all non-Title I schools.

The equitably provided regulations require that Title I children in Title I schools receive their fair share of specific services in comparison to children in non-Title I schools. These regulations are particularly useful when districts are introducing a new, locally provided service to some but not all children. For example, if a district implemented a limited new program to teach English as a second language, the equitably provided rule requires that Title I children be involved in the new program in relation to their proportion of the total number of children in the district.

As a whole, these funds allocation regulations give force to the statement in the Declaration of Policy that Title I funds be used to "expand and improve" programs by meeting the "special" needs of educationally deprived children in low-income areas. In order to accomplish this goal, they impose strict requirements on districts.

Program Development Requirements.--The second group of requirements govern program development and establish the procedures that LEAs must follow in designing and implementing Title I programs. These six major requirements are meant to insure that the services provided are related to the needs of the children to be served, and that they are carefully planned, implemented, and evaluated.

The needs assessment requirement is the first step in the program development process and involves identifying educationally disadvantaged children and specifying their needs. This requirement is intended to insure that all educationally disadvantaged children residing in low-income areas are identified.

The program design regulation requires a formal plan establishing objectives for the Title I program and the specification of activities and services to accomplish the desired ends, based on the results of the needs assessment.

The concentration requirement is intended to insure that Title I funds provide services of sufficient size, scope, and quality to give reasonable promise to success. This requirement takes on added importance since Title I typically is not fully funded.

The coordination requirement is intended to prevent Title I from duplicating benefits provided to the target population by insuring that Title I services are planned in conjunction with other Federal and state agency programs.

The program evaluation requirement provides that the effect of the Title I program be assessed. The results of these assessments should be used by LEAs in the design of future Title I programs and must be reported to the SEA.

The parent involvement requirement prescribes the nature and extent of parental involvement in the development and operation of Title I programs.

In general, the program development requirements incorporate elements of school educational planning by explicitly requiring formal program design, discouraging the expenditure of small amounts of money on each pupil, and requiring local program evaluation.

Necessity of the Framework

In order to assess the necessity of the legal framework NIE's research examined the relationship between the Statute and the rest of the legal framework to verify the statutory basis of the regulatory provisions. The most stringent Federal regulations are those laid down by the funds allocation rules, for example, those concerned with comparability, supplanting, and excess costs. None of them, of course, would be required if the statute were intended to authorize a program of general aid to schools in low-income areas.

However, they are actually based on statutory language requiring specifically that services funded from state and local sources be comparable in Title I and non-Title I schools, and that Title I provide special services for students. Thus, in order to carry out the statute as written, it is necessary to have regulatory language that addresses each of the issues.

The remaining question is whether districts would direct funds and services to the eligible population without the restrictions placed on them by the funds allocation requirements. The interviews conducted during the NIE Study indicate that districts would probably find it difficult to resist the strong pressure to use funds, including those provided through Federal programs, for general or emergency needs. Title I directors report that LEAs need funds for a wide range of purposes, only one of which is serving educationally disadvantaged children.

For example, local pressures exist to provide assistance to more affluent areas, to use Federal funds to mount special programs for purposes other than compensatory education, and to ameliorate the present fiscal crisis facing many jurisdictions. As one state Title I director explained:

> Historically, the educationally deprived in poor areas do not have the political clout to require the provision of equal resources, and certainly not extra services. Title I insures that these children will not be ignored. Most LEAs in my State, if left to their own devices, would not use Federal funds for compensatory education in poor areas; they would be used to counter the current fiscal crisis, whatever that crisis might be.

Meetings involving state and local Title I personnel confirmed that there are strong local pressures to use Title I funds for other than the intended purposes. As one local district Title I director stated:

> Without strong language in the Title I regulations (about the intended beneficiaries and the supplementary nature of the program), there is no question that Title I dollars would be used essentially as general aid. I don't think the superintendent could avoid that.

Other participants uniformly echoed these comments.

An examination of how the funds allocation requirements have developed over time provides confirmation of the view that regulations of this type are necessary to achieve Title I's goals.

The ordinarily provided requirements and comparability provisions were added in 1971 to address specific local fiscal problems identified prior to that time. In 1974, the excess cost provision was added because of existing local pressures. Thus, as various fiscal pressures confronted LEAs with increasing force, Congress and OE responded by adding new requirements to guarantee the intended use of Title I dollars.

The language of the program development requirements is not "necessary" in the same sense as that of the funds allocation requirements. The program development requirements are based on the assumption that systematic planning and implementation will lead to better quality services; they simply outline a common-sense process for the planning, implementation, and refinement of Title I services.

Although local districts have many pressures to use funds more generally than the funds allocation regulations allow, they have little incentive to deliver inferior or ineffective services. Moreover, even if LEAs follow the procedures established in the program development regulations, there is no guarantee that they will produce high-quality services. No regulations handed down from above can accomplish that. In fact, as the recent Rand Change Agent Study suggested, Federal program regulations have limited effect on the quality of the services that are provided at the local level.[4] However, the program development requirements do represent a plausible effort well within the statutory mandate of the Office of Education to guide local districts in implementing their Title I programs.

Consistency and Clarity of the Legal Framework

It is not enough simply to say that the major requirements contained in the legal framework are reasonably related to the intent of the Title I statute. One must also ask whether the total framework is internally consistent and clearly communicated to States and LEAs. If the framework is inconsistent or not fully disseminated, it cannot be effective in providing the necessary direction to program administrators.

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[4] Paul Berman and Milbrey McLaughlin, Federal Programs Supporting Educational Change, Vol. 4: Findings and Review (Santa Monica: Rand Corp., April 1975).

In assessing the consistency and clarity of the legal framework, NIE's research examined the regulations, guidelines, and interpretive rules to determine whether they are consistent with the intent of Congress as explained in the Title I statute and to discover whether there are contradictions in the regulations and interpretive rules. NIE's research also provided information on whether the meaning of the formal and interpretive legal frameworks is readily apparent or whether States and LEAs must invest inordinate amounts of time and legal scholarship in order to understand what is required of them.

Consistency.--On the basis of the research conducted in the Survey of Legal Standards, NIE has concluded that the legislative and interpretive rules that have been developed by HEW administrators are generally internally consistent. This is particularly true of the formal part of the framework in which no major examples of internal contradictions were found. No obvious cases were found where one regulation contradicted another or where one program guideline appeared in conflict with another or with the regulations.

Much of the interpretive legal framework was also found to be internally consistent. (A few minor inconsistencies were identified in the use of language but state administrators did not appear to have major difficulties in understanding the intent of the rules.) For example, the OE correspondence with States, interpreting various regulations, was found to be generally consistent. In every case, where an individual letter was read in conjunction with other OE letters on related points, an underlying policy emerged that was internally consistent.

Regulations and guidelines provide the same direction, and the interpretive framework is consistent with the formal rules it is intended to clarify.

The NIE analysis of the legal framework has also concluded that the regulations, guidelines, and interpretive framework in effect during the analysis are consistent with a reasonable interpretation of the statute. No case appears where a statement of legal policy in the Federal framework contradicts language of the legislation.

This conclusion does not mean that the legal framework always conforms with the only possible interpretation of the statute. In a number of instances, alternative interpretations of specific language in the statute might also be consistent with the statute and legislative history. For example, with respect to the funds allocation provisions, OE regulations since 1968 have defined "areas having high concentrations of children from low-income families" as those areas having a percentage or number of children from low-income families as high or higher than the districtwide average. This standard is clear and consistent with a reasonable interpretation of the statute. However, other definitions of "high concentration," such as having a percentage of children from low-income families that is 10% higher than the districtwide average, might also be consistent with the Title I statute.

There are examples of cases where the provisions of the formal legal framework regarding program development requirements are consistent with the statute but where other interpretations might also be consistent. In the area of parent involvement, for example, the statute states that parent advisory councils (PACs) are responsible for "advising (the LEA) in the planning for, and the implementation and evaluation of" local programs. The regulations echo this language and also specify a few specific PAC functions, which include reviewing the Title I application and evaluation and making recommendations on selection of services and educational needs to be addressed. These certainly are consistent with the statute.

However, the regulations could also be more specific about the nature of PAC activities related to the implementation of programs. Participation in monitoring activities, conducted by OE or by the SEA, is another interpretation that might also be consistent with the statute.[5]

Although these examples are cases in which alternative interpretations of the language of the statute might be consistent with the intent of the law, the fact remains that the legal framework that has been developed by OE is not at variance with the statute. The regulations, guidelines, and interpretive legal framework developed by HEW are generally internally consistent, and the legal direction they provide is consistent with a reasonable interpretation of Congressional intent.

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[5] In fact, some States have incorporated these interpretations into their own legal framework.

Clarity.--Just as important as the consistency of legal direction is its clarity. For purposes of NIE's analysis, a requirement was considered unclear if a Title I administrator, after thoughtful consideration of the language of the provision and its context in the statute or regulations, could not comprehend the full range of acceptable and unacceptable practices under Title I. If the legal framework is not clear, either as formulated or as communicated to the field, States and districts may develop varied interpretations of the legal direction, including some which may be overly restrictive.

The NIE analysis of the framework has concluded that the language of the standards and operational definitions for most LEA program requirements, as set forth in the formal framework and as supplemented by the interpretive framework, is not sufficiently clear because it does not take into consideration the needs of state and local administrators. Interviews at the state level suggested that some Title I directors, who have been active in Title I administration for a number of years and who have had sufficient time to study and interpret the various regulations and elements of the interpretive framework have been able to develop a clear understanding of the legal direction that is being provided. However, for those Title I directors at both the state and local levels who have had insufficient time to study the framework, the language of the formal and interpretive legal structure is likely to be less clear. Consequently, an SEA that has not invested a considerable amount of time in scholarship may not be able to comprehend a regulation or an OE interpretation of a regulation.

These problems with clarity apply to both the funds allocation and program development requirements. The most problematic program development regulations are generally those defining needs assessment, evaluation, and parent involvement. Funds allocation rules impose exacting requirements on districts, but they also create clearer and more rigorous standards for compliance. However, regulations such as those governing supplanting and student targeting provisions also generate considerable confusion.

In an effort to improve the clarity of the legal framework, OE has adopted the practice of providing individual interpretative responses to state and local inquiries about the framework. (In 1968, a compilation of letters of interpretation was issued as Program Guide 24. OE has not compiled a comparable document since then.) On the basis of a review, conducted in the Survey of Legal Standards, of the responses issued since 1968, NIE concluded that it has addressed many of the most difficult and controversial issues in the legal framework.

For example, OE letters concerning supplanting explain the design of pullout programs of various duration, the design of the in-class programs, the issue of giving credit to a student for classes taught by Title I-paid teachers, the classes a child can miss to receive supplemental instruction, the use of Title I funds for sick leave or plant operation and maintenance, and the circumstances under which the LEA may phase in programs formerly funded under Title I. In addition, the OE letters explain such targeting issues as the use of standardized tests, the meaning of the term "greatest needs," and the selection of kindergarten children.

However, OE has failed to disseminate these interpretations as a total set of directions. Individual responses have often been cryptic and have assumed an understanding of the overall framework that most administrators in the field simply do not have. Taken together, the interpretations do provide clear and unambiguous guidance regarding the implementation of the program, but SEAs generally have not been given insight into OE's overall interpretation, since they receive only the individual answers they have sought, and not an overall picture.

The formal legal framework supplemented by the interpretive framework is not sufficiently clear because it fails to address the various needs of its audience. Furthermore, although OE has developed a precisely phrased body of interpretations which if assembled, summarized, and interrelated would resolve the overwhelming majority of difficult questions raised by the States and districts, OE has failed to disseminate these interpretations widely. Thus, the Federal legal directions provided to States and districts about how to implement local Title I services, though consistent internally and with the statute, have not always been sufficiently clear to eliminate substantial ambiguities.

One way of improving the clarity of the Federal framework would be to assemble and interrelate in one place the various interpretive rules that OE has developed into a policy manual (see Appendix B).

Restrictiveness of the Framework

Another characteristic of the legal framework that has an important bearing on the nature of the direction provided to States and districts is its restrictiveness. The Survey of Legal Standards defined a restrictive requirement as one that, though consistent with the Title I statute and legislative history, placed burdens on LEAs that were not necessary to accomplish the stated policy, and thus impeded the potential development of sound and innovative programs.

Title I does, in one sense, place restrictions on the use of funds. It prohibits the use of Title I funds for several purposes which local districts might find amenable, such as general assistance or tax relief, and lays down strict conditions for the distribution of funds and services for Title I recipients. As the earlier section on the necessity of the framework indicated, these restrictions are necessary if Congressional intent is to be realized.

Beyond the important legal boundaries suggested by the statute, OE has generally interpreted the law to allow an adequate degree of flexibility to districts in attempting to meet the program's objectives. The framework does not restrict unnecessarily the design and implementation of sound and innovative programs for educationally disadvantaged children residing in low-income areas.

The flexibility of Title I can best be illustrated with specific examples of the types of policies and programs which the Federal legal framework permits. The following illustrations are derived from a review of the statute and regulations and were generally contained in OE interpretations included in correspondence with SEAs.

- An LEA may design a program under Title I that provides special services to educationally disadvantaged children while they are in their regular classroom (mainstream) or the LEA may decide to provide such special instruction in a separate location. This latter option is commonly referred to as a pullout program. The LEA choosing the latter model may "pull" the child out of the regular classroom for one period or for the entire day. It can design a program that is coordinated with regular instruction or totally restructure the child's curriculum in one area of instruction or in the entire curriculum.

- An LEA may purchase equipment, materials, and supplies, and even construct buildings with Title I funds under specified conditions, so long as the equipment has been selected and designated for special purposes in connection with a Title I project. Moreover, the Federal requirements do not prohibit the incidental and nonregular use of equipment purchased with Title I funds for non-Title I related purposes.

- An LEA may use its Title I funds in any grade level it chooses. Title I is not restricted to the elementary grades.

- An LEA may focus its Title I funds on the children who are furthest behind grade level at each eligible school (e.g., all children functioning at or below the 25th percentile); it can serve all educationally deprived children (e.g., all children functioning below the 50th percentile) at the schools with the highest incidences of children from low-income families; or it may implement any consistent policy midway between these two extremes.

- An LEA may serve educationally disadvantaged children in all its schools where the variation in the incidence of poverty among the schools in the district is not wide.

- An LEA may use Title I funds to pay for support services such as psychological counseling or medical assistance, as long as the needs assessment shows they are necessary, other sources of funding are not available, they are not ordinarily provided with state and local funds to children not participating in the Title I program, and only children in the Title I program take advantage of the services on a regular basis.

- An LEA may phase in a new program such as kindergarten without having to first serve all Title I project areas, as long as the program is equitably distributed throughout the system so that project areas are not penalized.

Effects of the Federal Framework on States and Districts

Since States, rather than the Federal Government, have the responsibility for the day-to-day oversight of local Title I programs, they often have to interpret Federal policies for local situations. Based on their understanding of the Federal framework, SEAs are in a position to promulgate their own regulations and guidelines to expand and elaborate the Federal direction. These regulations and guidelines, called state legal frameworks, create additional limits within which districts must implement the program. Thus, the state legal framework can play an important role in determining the nature of the direction that districts receive.

Because of this additional step of developing and disseminating a legal framework to guide local behavior, the clarity of the Federal framework takes on added importance. A failure to comprehend the details of it may be compounded by the interpretations that States incorporate into their own directions to districts. The result may be either inaccurate or illegal state interpretations or state requirements that are overly restrictive.

Although the total Federal framework permits adequate flexibility in the design of educational programs, OE's failure to disseminate the practical guides it has given to some States has resulted in insufficient guidance to SEAs about how to design a variety of programs within the legal framework. Some SEAs have responded by developing their own sound, comprehensive, and flexible models for Title I programs. Other SEAs, however, because of their uncertainty or misconceptions about the meaning of certain requirements and the fear of possible audit violations, have either promulgated overly restrictive policies concerning the kinds of programs Title I may fund or matched OE's lack of guidance with their own silence.

This lack of clarity has not encouraged flexibility in program design; rather, it has discouraged the development of innovative programs. A prime case in point is the issue of pullout vs mainstream programs. Some SEAs will not approve mainstream programs because they perceive pullout programs as the only way to meet the regulations for structuring Title I instruction. Other SEAs insist that all Title I instruction be in regular classrooms because they are afraid that pullout programs are generically in violation of the regulations. In fact, the Federal legal framework permits both types of classroom settings. States also prohibit other program design components, which, based on past experience, have been prone to abuse, such as the provision of art or music instruction, guidance counselors, or nurses. In all these cases, States have generally not understood the Federal regulations sufficiently to be able to assist local districts in designing legal programs incorporating these factors. They have interpreted unclear Federal direction restrictively for fear of approving illegal programs.

In meetings with several groups of district Title I personnel, NIE has heard numerous complaints about overly restrictive regulations that prohibit LEAs from developing sound and innovative programs. On closer examination of the particular regulations, it has become clear that in the vast majority of cases, the districts have complained about interpretations that are not part of the Federal framework; instead, state-promulgated interpretations, based on an incomplete understanding of the Federal framework, have been at fault.

The lack of clarity of the Federal framework has affected state administration in another way. Since state Title I coordinators have had to spend a considerable portion of their time trying to comprehend the Federal legal framework, they have had proportionately less time to spend providing technical assistance to districts for the purpose of improving the quality of programs rather than solely meeting compliance requirements. As a result, according to the NIE Study of State Administration, "although minimal compliance for (the program development) regulations may exist, such compliance does not assure useful activities."[6]

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[6] Robert J. Goettel with the assistance of B. Kaplan and M. Orland, "A Study of the Administration of ESEA, Title I at the Federal, State, and Local Level: A Final Report," Chapter 3, draft, p. 3-3.

CHAPTER III. FEDERAL MANAGEMENT: ENSURING THE SUPPLEMENTARY NATURE OF TITLE I

INTRODUCTION

The preceding chapters described the Title I legal framework and analyzed OE's performance of the rulemaking function. OE and other units in HEW are also responsible for monitoring and enforcing compliance with the rules. Without some effort to verify compliance and to apply sanctions when violations are found, the legal framework would be merely a compilation of advice to the States and districts. The Federal Government's day-to-day monitoring and enforcement of the Title I rules are of critical importance in determining whether the legal framework has its intended effects.

For that reason, NIE initiated a study of Federal management of Title I. The purpose of the study is to assess the clarity and consistency of the Federal Government's efforts to apply the Title I legal framework in the day-to-day operation of the program. The research is being conducted in-house by the staff of the NIE Compensatory Education Division. It relies on extensive interviews with officials responsible for the various aspects of the Federal administration of Title I, and on reviews of official communications between the Federal Government and States and LEAs.

This chapter presents the results of one part of the study. It focuses on the monitoring and enforcement of certain requirements intended to guarantee the supplementary nature of Title I.

The requirements were chosen for analysis for two reasons. First, guaranteeing the supplementary nature of program funds is an essential feature of the Title I program. Title I dollars are intended to be spent over and above those normally provided through state and local sources. Local districts, faced with recurrent fiscal crises, are often under considerable pressure to use Federal funds to replace state or local monies. Without provisions requiring supplementation, there would be no guarantee that Title I funds would be used in a supplementary way.

Second, past audits of state and local districts' compliance with these provisions have revealed major problems. In the 12 years of the program, HEW's Audit Agency (which audits all HEW programs) has recommended that more than $240 million be returned to OE because of findings of fiscal violations.[1] A recent analysis of audit exceptions in 19 States showed that, in those States alone, almost $40 million in violations of the requirements regarding supplementation had been identified.[2]

NIE's research on State administration has further documented the importance of a study of these requirements. On the basis of case studies in 8 States and 32 local districts, NIE's contractor concluded that there were "major state variations" in this area. In fact, the contractor's final report[3] stated:

> Federal requirements in the areas of supplanting/general aid and student selection appear to be by far the most misunderstood and disputed aspects of Federal administrative policy. Federal officials are consistent and clear in interpreting for states basic aspects of these requirements, but substantially less so in dealing with some of these requirements' more complex ramifications.

In light of these findings, an examination of the Federal management of the requirements guaranteeing supplementation appears essential.

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[1] Elizabeth Demerest, "DHEW Sanction Study." (Washington, D.C.: Department of Health, Education, and Welfare, January 1977).

[2] Hal Winslow and Ann Hershberger, Supplement Not Supplant: A Note on the Definition and Use of a Title I Requirement. (Palo Alto, California: Education Policy Research Center, Stanford Research Institute, May 1977) draft, p.17.

[3] Martin E. Orland with the assistance of Bernard A. Kaplan and Robert J. Goettel, "A Study of the Administration of ESEA, Title I at the Federal, State and Local Level: A Final Report," Chapter 2. (New York: Syracuse Research Corporation, June 1977) draft, p. 2-3, 24.

This chapter contains four sections:

- An overview of the methods used by the Federal Government to monitor and enforce compliance with the supplementary services guarantees
- A review of inconsistencies in Federal management, as manifested in the use of indicators to identify violations and in the application of sanctions for noncompliance
- A discussion of the factors that account for Federal inconsistency
- An analysis of the effects of inconsistent Federal management on the ability of Title I to meet its objective of supplementation

The Federal administration of the requirements guaranteeing the supplementary nature of the program is neither clear nor consistent. Some OE officials administer the same requirements in different ways at different times. Furthermore, officials at various levels in the OE hierarchy administer the relevant requirements differently, and the findings of program review teams and official audits are often reversed. As a result, the level of OE monitoring and enforcement has declined significantly in recent years; States and LEAs now receive little clear guidance and are not effectively supervised in their use of Title I funds. These findings suggest that the provisions of the legal framework guaranteeing the supplementary nature of Title I are losing their effectiveness.

OVERVIEW OF FEDERAL GOVERNMENT MONITORING AND ENFORCEMENT ACTIVITIES

The Legal Framework

The Federal Government communicates its policy regarding the use of funds to States and local districts through the rulemaking process. As the previous chapter showed, OE has issued a series of regulations or legislative rules to clarify the statutory requirements that Title I funds be used for supplementation. It has also provided, through handbooks and correspondence, numerous rule interpretations to advise the States and local districts of the construction of the statutes and rules it administers.

The formal legal framework in effect during the period under study (1974-1977) included three requirements--supplement not supplant, excess costs, and ordinarily provided--that were designed to ensure that the objective of supplementation was met in practice.[4] The three provisions were expressed as technically separate requirements, but they were meant to complement one another. Because all three requirements contributed to the objective of supplementation, NIE considered all three together in its review of Federal management.

The first requirement specified that the LEA could not decrease the level of funds that would have been provided to program participants if Title I did not exist. It further specified that neither Title I project areas nor program participants could be penalized with respect to the distribution of state and local funds because of Title I's existence.[5]

The second requirement specified that Title I funds could be used only to pay for the excess costs of programs.[6]

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[4] Other requirements ensuring the supplementary nature of Title I include a provision based on Section 143(c)(1) of the statute prohibiting the distribution of state aid in any way that took an LEA's Title I allocation into consideration and then penalized the LEA in the distribution of state aid, the maintenance of effort provision, and the comparability provision.

[5] The revised regulations no longer include an express provision prohibiting LEAs from penalizing project areas. Such penalization is covered by other provisions.

[6] Prior to 1974 the excess costs concept appeared in Program Guide 44, Section 4.1. In 1974 the provision was expressly added to the Title I statute.

The third requirement specified that Title I could not be used to pay for services which were ordinarily provided to children in non-Title I areas with state and local funds.[7]

Federal Procedures for Insuring the Supplementary Nature of Services

The principal methods by which OE and other units in HEW monitor and enforce compliance with the rules are program reviews, audits, and responses to complaints from local officials or citizens.

Program Reviews.--OE's Division for Education of the Disadvantaged (DED) conducts annual monitoring visits to each State and to districts within each State. The visits are designed to insure that SEA administration of Title I complies with the statute and regulations. After approval by the Associate Commissioner for Compensatory Educational Programs, reports and recommendations are sent to the State's chief state school officer. Where changes appear necessary, States are expected to respond by informing OE of the action they plan to take. If the problems identified by the Review Team are serious, and the State refuses to alter its policies or procedures, a hearing process is begun. Title I funds may be withheld if the State is unsuccessful in making its case during the hearing. In the choice of regulations to monitor and the resulting recommendations, therefore, program reviews can influence state and local perception of their responsibilities under the Title I legal framework.

In addition to conducting such formal factfinding, Review Team members, once in the field, are often asked by state and local officials to provide ad hoc technical assistance in the form of advice on how to implement different regulations. These less formal interactions also provide significant indications to SEAs and LEAs of the importance Federal administrators attribute to various Title I rules and regulations.

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[7] This requirement has been deleted by the revised regulations. In its place OE has substituted the "equitably provided" provision which generally provides that services paid for from state and local sources must be equitably provided without regard to the availability of Title I funds.

Audits.--The audit process is another mechanism for monitoring and enforcing compliance. HEW's Audit Agency, which is entirely separate organizationally from OE, conducts audits of state and local administration of Title I. Based on their findings, auditors make recommendations for procedural changes in administrative practices and for repayment of funds spent in violation of Title I regulations.

After the Audit Agency issues its report, it becomes OE's responsibility to determine which findings should be sustained and then to apply appropriate sanctions.[8] Several levels of OE's bureaucracy--DED, the Office of the Associate Commissioner for Compensatory Educational Programs, and the Deputy Commissioner of the Bureau of Elementary and Secondary Education (BESE)--are involved in these decisions. Once a decision is made, a Final Determination Letter is sent from the Deputy Commissioner to the State's chief state school officer. The content and timing of that letter are important to the State, because Title I includes a Statute of Limitations. If no Final Determination Letter is issued within 5 years of the date of the violation, OE loses its legal right to collect the misspent funds.[9]

Response to Complaints.--Finally, various OE offices are required periodically to respond to citizens' complaints about alleged irregularities in the implementation of Title I. These offices are responsible for seeing that the State replies adequately to the complainant or, in the case of a formal legal suit, for providing appropriate testimony on OE's position on the disputed issue. While many complaints are handled at the Division and Bureau levels, the HEW Office of General Counsel often becomes involved in such issues.

As the preceding discussion suggests, the Federal administration of Title I is complicated simply by the large number of offices involved in monitoring and enforcing compliance with the legal framework. The policies of DED, the OE Division directly responsible for administering the program, are reviewed first by the Associate

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[8] Under procedures presently in use no audit report or Final Determination Letter is to be issued until agreement is reached between the Audit Agency and OE. If agreement cannot be reached, procedures exist for arbitration. The procedures described in the text prevailed for most of the audits examined for this report.

[9] Congress adopted the Statute of Limitations provision in 1974.

Commissioner for Compensatory Educational Programs (CEP) and ultimately by the Deputy Commissioner for the organization to which both belong, BESE. States may appeal BESE Audit Final Determination Letters to another level in the OE hierarchy--the Audit Hearing Board, whose decisions can then be appealed to the Commissioner of Education. Furthermore, the Audit Agency, which audits Title I programs, while a part of HEW, is organizationally separate from OE. Considering the many layers of responsibility and authority for monitoring and enforcing Title I, it seems highly probable that inconsistent policies will result.

INCONSISTENCIES IN FEDERAL MANAGEMENT: CONFLICT WITHIN OE

While the sheer number of administrative units involved with compliance enforcement makes the development of consistent compliance standards difficult enough, the difficulties that might routinely be expected are magnified by a basic conflict within OE between DED and the Office of the Associate Commissioner for CEP over the proper role of the Federal Government in implementing educational policy. This conflict has serious implications for the implementation of Title I because it threatens to paralyze Federal efforts to enforce compliance with provisions of the statute and the regulations. This conflict manifests itself in several ways: disagreements over which indicators should be used to monitor compliance with the supplementary intent of the program, disagreements over whether expenditures should be monitored at the school level or at the student level, and disagreements over the kind of evidence sufficient to allege a violation.

DED's Position

DED derives its indicators of violations from the statutory prohibition that provides that an LEA may receive a grant only if:

> . . .Federal funds made available under this title will be used (i) as to supplement, and to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this title, and (ii) in no case, as to supplant such funds from non-Federal sources. . .[10]

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[10] 20 U.S.C. 241e(a)(3)(B)(1976).

The stipulations that Federal funds supplement the level of funds that would have been provided Title I participants in the absence of Title I funds defines a goal but does not provide an operational mechanism for inducing compliance. DED contends that because one can never know with certainty how a State or local district would have behaved in the absence of Federal aid, some indirect indicators of compliance are necessary.

DED uses five different indicators to determine whether the level of funds has been reduced. Each test relies on services provided to Title I participants as an indication that a reduction in the level of funds has occurred. DED assumes that since the purpose of Title I is to fund supplementary programs for educationally disadvantaged children from poor areas, the logical approach to determine whether supplementation occurred is an examination of the services paid for by Title I. The LEA in turn can rebut any alleged violation by showing that Title I funds in fact were used in a supplementary fashion for Title I participants. DED justifies this presumptive approach on two grounds. First, States have signed assurances that LEAs have designed compliant programs. Thus, if evidence to the contrary is uncovered, it is the responsibility of the States and LEAs to rebut the findings. Second, DED officials maintain that States and LEAs have been made aware since 1968 that the burden of proof rests on their shoulders should OE or the Audit Agency uncover a possible abuse in this area. They cite Program Guide 45A, issued in July 1968. It stated:[11]

> In reviewing Title I proposals, the SEA should be particularly alert to the following indications of violations of basic Title I requirements. The applicant is proposing to use Title I funds to provide in the project area services that are already being provided or that will be provided in the non-project areas with State and local funds. Any applicant that insists on entering a proposal fitting the description of 5 or 6 above must assume the *burden of proof* that the proposal does not involve the supplanting of State *and local funds*. . . .(Emphasis added)

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[11] U.S. Department of Health, Education and Welfare. "ESEA Title I Program Guide No. 45A." (Washington, D.C.: Office of Education, July 31, 1969), p. 1-2. More recently (May 1977), the use of presumptions and shifting the burden of proof where one party has superior access to the evidence was sustained by the Supreme Court in a case involving Title VI of the Civil Rights Act (employment discrimination). See *International Brotherhood of Teamsters* v. *United States*.

DED uses three indicators of violations at the school level and two at the student level.

School Level Indicators.—At the school level, DED uses the following indicators: the ordinarily provided provision of the regulations, a withdrawal of services test, and a cancellation of previous commitment test.

During the early years of Title I (1965–1970) a common violation of the supplementation requirements was the use of Title I funds to pay for services that were generally provided in non-Title I schools with state and local funds. Had Federal funds not been available, such services would have been provided from state and local funds. To stop this practice, the supplanting section of the regulations was strengthened in 1971 by a provision (116.17(h)) prohibiting the use of Title I funds for services ordinarily provided in non-Title I schools.[12]

A second indicator is a "withdrawal of services" test. DED has cautioned local authorities that withdrawing services previously provided in Title I project schools with state and local funds and then restoring the services with Title I funds constitutes a violation.[13]

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[12] The phrase "generally provided" appeared in the regulations as early as 1968. Also all the Program Guidelines issued by OE between 1968 and 1970 included similar provisions. See Program Guides 44, 45, 45A, and 57.

[13] In a recent DED letter to a State, this test was outlined:

> It is difficult, of course, to determine precisely the level of non-Federal funds that would be provided if Title I funds were not available. There are, however. . .basic indications of decreases in that level; (a) the withdrawal of services that had been provided at Title I schools. . . .The use of Title I funds to restore the services. . .would constitute supplanting.

Quoted from Robert Silverstein and Daniel M. Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965." (Washington, D.C.: Lawyer's Committee for Civil Rights Under Law, 1976), p. 464. This letter continues that policy formerly contained in OE's officially published Program Guide 45A.

DED's third indicator covers situations in which an LEA has not actually expended state and local funds in the past but has made a commitment to do so. For example, an LEA might commit local funds for the construction of additional classrooms at several Title I schools. If the school board cancels the encumbrance of bond funds and uses Title I funds instead, DED maintains that the LEA has improperly reduced the level of funds that would have been provided but for the existence of Title I.[14]

Within-School Indicators.—DED believes that the statutory provision that Title I funds be used "...for the education of pupils participating in programs and projects. . ." requires an effort to monitor the use of funds below the school level, to guarantee that the individual students selected to participate in Title I actually receive supplementary services.

DED is aware of the problems of gathering accurate data on sources of funds specifically provided pupils in a classroom. The staff of DED acknowledge that a direct measurement of the net impact of Federal funds at the pupil level would require schools to keep impossibly detailed financial records on a pupil-based accounting system. But they claim that their indicators can show whether Title I participants received an equitable share of state and local resources, as well as whether the programs funded under Title I are adding anything extra to the education of Title I participants.

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[14] Silverstein and Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965", p. 464.

DED uses two indicators to determine whether the students who participate in Title I programs also receive services from state and local sources that correspond to the "level of funds" that would have been spent on them in the absence of Title I. The first is used in situations in which the Title I program is offered in conjunction with the child's regular curriculum. In this situation, the LEA must show that Title I funds are being used to "expand and improve,"[15] i.e., supplement, the regular curriculum. For example, the use of Title I funds to pay for a classroom aide to work directly with Title I students, either in the regular classroom or a separate location, can "expand and improve" those children's program if the aide's work is coordinated by the child's regular classroom teacher. Because the regular teacher retains ultimate responsibility for the child's educational program, DED presumes that the LEA has maintained the level of state and local funds which "would have been provided" if Title I did not exist and has used Title I only to supplement the regular program.

The second indicator is applied if Title I funds are used to support a distinct program which replaces part or all of the child's regular program. In this situation, the district must pay its fair share of the costs of the child's educational program, and Title I funds must be used only for "excess costs". If the Title I child's restructured educational program costs more than the LEA normally spends for a child's instruction, "excess costs" exist and can be paid from Title I funds.

Position of the Office of Associate Commissioner

Officials in the Office of Associate Commissioner for CEP are reluctant to apply the indicators used by DED. They are especially critical of DED's use of services as an indication of a possible decline in the level of funds. According to their interpretation of the legal framework, the most appropriate test is a comparison of the level of funds at two points in time.[16]

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[15] Section 101 of the statute. Also see Silverstein and Schember, "An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965," Chapter 9. For a specific statement of the policy on "coordinated with and supplemental to, "see the letter from DED's Director to the Title I Coordinator in Kansas, Richard L. Fairley to Mr. Kenneth Gentry, May 22, 1975 (DED files, Washington, D.C.).

CEP also takes a critical view of DED's presumption that once evidence of possible supplanting is uncovered, the LEA is responsible for refuting the charges. CEP officials argue that the burden of proof is on OE to demonstrate noncompliance.

Illustrative of CEP's position is its rejection of a proposed Final Determination Letter in which DED had upheld, on the basis of the ordinarily provided provision and the withdrawal of services test, an Audit Agency finding of supplanting. CEP wrote:[17]

> The basic rationale for the supplanting exceptions taken by the auditors is that Title I funds "were expended for projects in target area schools while comparable services were funded with state and local funds in nontarget area schools" and because "services previously provided with state and local funds" subsequently were supported with Title I funds. Neither of these reasons constitutes proof, per se, that supplanting occurred. Such proof would require an examination of the aggregate level of funds expended from state and local sources and not simply an examination of such funds used for a single service or partial set of services. . . .Accordingly, I decline to concur with (DED's proposed) final determination that supplanting occurred and that a refund must be made. The. . .(an LEA) and. . .(another LEA) allegations seem to be based on a similar misconceived computational procedure and likewise does (sic) not have my concurrence. (Emphasis added)

CEP's actions suggest that the auditors (and DED) must conclusively prove that a supplanting violation has occurred; the use of services to establish a presumptive indication of a violation is unacceptable.

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[16] John Rodriguez, Memorandum to Chairman, Title I Task Force. (Washington, D.C.: Compensatory Educational Program, October 29, 1976), p. 2 and Tab A, p. 1; John Rodriguez, Memorandum to Deputy Commissioner, BESE: Title I Compliance Standards--DECISION. (Washington, D.C.: Compensatory Educational Program, October 7, 1975), p. 2-3; John Rodriguez, Supplement, Supplant, and Comparability. (Washington, D.C.: Compensatory Educational Program, September 22, 1975), draft, p. 1-2.

[17] Associate Commissioner, Compensatory Education Program, Memorandum to Deputy Commissioner, BESE, Regarding Nonconcurrence with Final Determination Letters on Title I Audits. (Washington, D.C.: Compensatory Educational Program).

CEP officials also believe that within-school indicators will never produce information sufficiently reliable to support a supplanting allegation. At present, it is impossible to determine precisely the funding sources of programs specifically provided pupils in a classroom. An analysis of the net impact of Federal funds at the pupil level, CEP officials argue, would require that schools keep detailed financial records, including daily records of the activities of each student and teacher. Such recordkeeping is highly impractical, they argue, which means that within-school indicators are inherently misleading and, therefore, unreliable.

Furthermore, CEP officials are particularly opposed to within-school indicators because such monitoring and enforcement might reduce the autonomy of local school officials in determining their own programs. As one CEP official put it:

> Logically what (the Division is) saying is that Title I has the authority to tell the School Board to provide a group of kids services that are useful to them. We say that if the curriculum provided by the School Board does not meet the needs of specific kids, the Board should decide to revise its program. Title I doesn't have the authority to do it. Title I doesn't give us the power to require States and locals to make such changes.
>
> What the Division is really saying is that Title I should have precedence over the right of a Principal to determine the kind of curriculum he should have in that school.

Consequently, CEP officials propose a school level test for intraschool supplanting. As one CEP official put it:

> Because of the problems (of per-pupil accounting and political interference) associated with tracking funds below the school level, you have to stop at that level. You cannot go below the school level.

Thus, according to CEP officials, "The ultimate test becomes whether the school saved money. If the school can show that the costs to the school have not decreased, then. . .(there has been no supplanting)."

The Underlying Factor: Disagreement Over the Federal Role

The common thread uniting these differences into a clear pattern is a disagreement between DED and CEP over the proper role of the Federal Government in implementing educational policy. DED officials place priority on guaranteeing the supplementary nature of the program and believe that only an active monitoring and enforcement policy will achieve that goal. CEP officials, on the other hand, believe in a more restrained Federal role, which severely limits the actions they will take to guarantee supplementation.

One CEP official spoke directly of CEP's belief that the Federal Government should restrict itself to the absolute minimum level of action consistent with the statute: "We believe in giving States maximum flexibility under the law. We believe in a strict interpretation of the law. This. . .is a question of proper governance."

On the basis of that belief, CEP opposes DED's efforts to monitor or enforce the supplement not supplant prohibition if those efforts might affect the power of a school board or school principal to determine local curriculum.

Moreover, CEP officials believe that the proper role of the Federal Government is to distribute funds, not to exert precise control over their use. As another CEP official put it:

> We (CEP and DED) have different value orientations regarding the perceived purpose of Title I. DED sees Title I as the Federal Government's major contribution to educational reform. We see it as the Federal Government's major contribution to educational finance or support. . . .Money is to be used to finance better services about which we have little to say.

Given this approach to the Federal role, whenever CEP must choose between a limited or a comprehensive interpretation of a particular provision, the limited view prevails. This greatly restricts the kinds of operational tests CEP will approve for determining whether a supplanting violation has occurred.

DED agrees with CEP that Title I is primarily a funds distribution program and that the Federal Government should not prescribe curriculum. However, DED officials believe that the Federal Government must play an active role in insuring that funds are actually used for supplementary programs for educationally disadvantaged children from poor areas. As one official put it:

> Experience in administering Title I has taught us two lessons: (1) State and local governments historically have neglected the educational needs of such children, and (2) there are strong incentives at work to dilute services to these children and to use the money for more general aid purposes.

This has led DED to enforce provisions more vigorously than CEP.

Consequences of the Disagreement

The conflict between DED and CEP over the Federal role has seriously affected OE's ability to implement the supplementation provisions of the Title I legal framework. Direction to the field has been unclear and inconsistent. Furthermore, there are even signs that overall efforts to monitor and enforce these provisions have declined.

Inconsistent and Unclear Direction in Federal Management.--In some cases, Federal efforts to monitor the supplementation requirements have not helped States and LEAs understand how to implement these provisions.

The resolution of three recent HEW Audit Agency allegations is a case in point. Though the Audit Agency found similar violations in three States, the outcomes were very different in each case. One State has not received a Final Determination Letter on a $1 million audit exception,[18] and the statute of limitations is running out.[19] One State received a Final Determination Letter, but it came so late for certain findings that the statute of limitations prevented OE from collecting the misspent funds.[20] A third State received its Final Determination Letter, and will have to repay the full amount of a $200,000 audit exception.[21]

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[18] The Oklahoma Case, Audit Control Number 50012-06.

[19] Congress adopted the Statute of Limitations provision in 1974. It provides that a State must be notified of a violation within 5 years of its occurrence. OE does this through its Final Determination Letters.

[20] The Kansas Case, Audit Control Number 40002-07.

[21] The Pasadena Case, Audit Control Number 40015-09. The Final Determination Letter was sent prior to the 1974 OE reorganization, which gave CEP expanded responsibility over DED programs.

Due to the disagreements within OE, even those States which are subject to audit exceptions cannot be sure whether they are in violation or what the costs of noncompliance will be.

Similar confusion in the direction provided to States and districts stem from DED program reviews. This study found that not all DED Review Teams are equally vigorous in verifying the supplementary use of funds, and that some make no investigation at all. Moreover, of the teams that do investigate this area, many hesitate to put their findings in writing. Thus, while some States and local districts may find their practices written up (e.g., 1977 California Program Review), others may be informed of possible violations only orally (1977 D.C. Program Review), and still others may never be advised of possible violations (1977 Texas Program Review).[22]

Further confusion results from difficulties Program Review Team members in the field have in interpreting the regulations for SEAs and LEAs. Actions by higher OE authorities have clouded policies that monitors once believed were clear. Recounting difficulties he had experienced, one staff member said:

> Higher officials have told me that we have no policy on supplanting. This makes for inefficiencies in our job when we go out to the field. For example, in (a State) a team a few years ago told the SEA that there were examples of supplanting but there was no further word from Washington. When I went out there, the SEA and the particular LEA asked me to give advice on how to restructure the program to avoid supplanting, but I couldn't tell them because I was not sure how our policy squared with what the higher-ups were thinking.

An example of even more serious confusion arising over the supplanting issue was cited by a regional audit agency official. He said:

> We held a meeting with OE people in. . . .(a State) to discuss some of our findings on supplanting and general aid. Division representatives showed up and they agreed with our findings (on a violation of the ordinarily provided provision). . . .At the same time, a CEP official was over in. . .(a city in a neighboring State) meeting on the same issue. I talked to. . ., who was at the meeting, and found that CEP had completely contradicted what the Division had said. I was flabbergasted.

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[22] Based on participant observation by NIE staff.

Finally, OE responses to citizen complaints and OE positions in legal actions brought by local citizens fail to provide clear and consistent direction to SEAs and LEAs. In two cases examined by NIE, OE was reluctant to respond to citizens complaints or to participate in legal actions which concern the proper use of Title I funds. OE supported the plaintiffs in one court case only after it received strong pressure from a public interest group, and, in the second, in the absence of outside pressure, the complaint languished for nearly a year while OE tried to define its position.[23]

The confusion about the appropriate interpretation of the supplementation provisions might be expected to lead to difficulty in local school districts. Other studies conducted as part of the NIE evaluation confirm the existence of such difficulty.

The Study of State Administration, for example, found the supplanting/general aid prohibitions to be among the most misunderstood features of the administration of the program at the local level.

The lack of clarity about this issue was further highlighted by the following conclusion in the contractor's final report.[24]

> Some States exploit the. . .(inconsistency of Federal direction) by searching for USOE officials who will provide policy interpretations that are consistent with State policy activity. Some State Title I Directors will make a number of phone calls to USOE officials until they receive a favorable interpretation. Other States establish ongoing relationships with particular USOE officials who are usually sympathetic to State concerns while avoiding communication with personnel who tend to be relatively indifferent to such concerns.

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[23] The Richmond Unified School District Case and the Tracy School District Case, OE files.

[24] Martin E. Orland with the assistance of Bernard A. Kaplan and Robert J. Goettel. "A Study of the Administration of ESEA, Title I at the Federal, State and Local Level: A Final Report," Chapter 2. (New York: Syracuse Research Corporation, June 1977), draft, p. 24.

Decline in Federal Management Activity

In addition to the lack of clarity provided by Federal monitoring and enforcement, there are clear indications that overall management activity with respect to supplementation is already declining. CEP has either rejected DED's support of audit findings or approved of proposed Final Determination Letters only under a narrow set of conditions.

One CEP official expressed an extreme view: "I don't even discuss audits with the auditors anymore. I've told them I simply won't sustain audit exceptions about supplanting--ever. If that's in there, forget it."

In fact, CEP has not absolutely refused to implement sanctions but has been reluctant to do so. For example, in 1974 and 1975 CEP rejected DED's support of auditor fundings alleging violations of the supplementation requirements in New York ($27 million); Wisconsin ($3.4 miliion); Oklahoma ($1.4 million); Tennessee ($250,000); and Kansas ($233,000).[25]

During 1976, CEP did approve some DED proposed Final Determination Letters but only under one of three conditions:

(1) The State admitted it engaged in supplanting activities[26] or pleaded no contest.[27]

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[25] Because only the Deputy Commissioner (the Bureau Chief) has the authority to issue a Final Determination Letter, the Associate Commissioner's refusal to approve DED's proposed Final Determination Letters for these cases represented only a negative recommendation. However, the final results were consistent with letters CEP did approve: two letters were never sent and are still pending (New York and Oklahoma), two were sent upholding the Division's findings but only after the Statute of Limitations had substantially reduced the findings (Wisconsin and Kansas), and one was sent reversing the Division (Tennessee).

[26] Long Beach, California, Audit Control Number 40034-09.

[27] Neglected and Delinquent, California, Audit Control Number 50001-09.

(2) The Statute of Limitations reduced the original financial exceptions to zero[28] or close to zero.[29]

(3) The amounts were a smaller part of a more substantial finding based on another regulation.[30]

Activity in the area of program reviews has also been affected. Beginning in 1975, CEP officials began to challenge, tone down, and even remove DED monitoring findings on supplanting from Review Letters sent to the States. As a result, since fall of 1975, there has been a marked decline in the reporting of supplanting, as Table I shows.

TABLE I

SUPPLANTING ALLEGATIONS REPORTED IN PROGRAM REVIEW LETTERS, BY NUMBER

Fiscal Year	Supplanting Allegations
1971	198
1972	346
1973	80
1974	32
1975	64
1976	9
1977	11

Source: Program Review Letters, DED, Washington, D.C.

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[28] Illinois, 50006-05; Kansas, 10014-07.

[29] Arkansas, 20005-06; Haywood, California, 50000-09; Illinois, 50006-05; North Carolina, 20159-04.

[30] Kentucky, 70005-04; New Mexico, 20093-06.

Moreover, in those instances in which findings of nonsupplementation are included in the letters, the tone of the letters differs markedly from that used prior to 1975, when they were sent directly by the Division. Previous letters had stated that "corrective actions with respect to findings A, B, C, etc," were to be undertaken. Now that CEP has centralized control of this process, changes are merely recommended rather than required.

Changes in dealings with one State with a history of problems illustrates this trend. In the Review Letters for fiscal years 1972 and 1973, numerous violations were cited under the heading "Supplanting." The State was told directly that ". . . corrective action must be taken in order for the State to conform to the assurances filed with the Office of Education at the inception of the Title I program."[31] In fiscal years 1975 and 1976, the practices which had been judged in violation of the supplanting regulations still prevailed in this State. But review letters for those years, instead of directing corrective action, merely made recommendations. For example, the letter for fiscal year 1975 stated: "Recommendation: It is recommended that the SEA assist the. . .officials to develop Title I activities which are supplementary to the program funded both with State and local funds. . . ."[32]

Finally, on several occasions during the past year, the delay resulting from disagreements about violations of the supplementation requirements has meant that the Statute of Limitations period has passed, making it impossible to collect misspent funds. At least two Final Determination Letters were held up past the required deadline, and several audit reports were not processed quickly enough to be useful.

Perhaps the most serious consequence of the dispute has been the reduced incentive for DED program reviewers and Audit Agency personnel to monitor the supplementation requirements actively.

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[31] Richard L. Fairley, Program Review Letter to Oklahoma, Fiscal Year 1971. (Washington, D.C.: Division for Education of the Disadvantaged, January 2, 1972), p. 1-2.

[32] John H. Rodriguez, Program Review Letter to Oklahoma, Fiscal Year 1975. (Washington D.C.: Compensatory Educational Program, September 11, 1975), p. 3-4.

DED officials unanimously claim that CEP's actions have seriously eroded morale with respect to enforcement of these provisions. Every time an audit report alleging a violation arrives, officials know they face a protracted, often acrimonious, conflict. DED and audit officials question whether such continued efforts can be sustained, given their costs in terms of time, effort, and aggravation.

For those who must prepare the initial drafts of Final Determination Letters, there are more immediate personal consequences. As one staff person put it:

> I'm not sure when I write a Determination Letter that it represents the correct position of OE. Moreover, I feel that every time I write a letter I am personally sticking my neck out. If there is any question about the letter, it's ultimately up to me to defend our position. The Associate Commissioner for CEP is my boss' boss. This issue has gone all the way to the Bureau level and never been resolved, but the Associate Commissioner feels very strongly about it. And he has challenged us on it.

With respect to program review monitoring efforts, the trend is already clear; DED Review Teams no longer systematically monitor this area. The debate over these requirements is directly related to this development. As one DED official said:

> Program Review Teams now are less likely to investigate areas where supplanting might occur or to write it up should they find it, because they know they can't get it through. The entire controversy has had an inhibiting effect on Program Review Teams in this area.

This opinion was confirmed by the DED staff members who do the program reviews. One said:

> When we're on Program Reviews, we avoid looking at supplanting. The whole situation in (a State) is supplanting but we haven't even surfaced the issue because of the Associate Commissioner. It's been a couple of years since I even wrote up a supplanting finding in a letter.

Observation of three of the five monitoring teams during the spring of 1977 confirmed the existence of widely disparate policies in the field. One staff member explained: "If we knew what a defensible position on supplanting was, then we would go ahead and investigate that area."

The Audit Agency has also been affected by the dispute. One Audit Agency official told regional audit directors:

> The Office of Education is no longer a high priority for audits. We've audited the hell out of them. We continue to have the same findings but there is no action by OE. What is the sense of devoting man year after man year on Title I if OE is not going to do anything about our findings?

Regional auditors express similar views. In one region where no new Title I audits have been scheduled for the past 3 fiscal years, the supplanting controversy was singled out as the primary reason for shifting priorities away from Title I. One regional official said:

> Until we get some more interpretation that we can all agree on before we start an audit, it is a waste of manpower to go out and audit. You put in all that labor and time and then lose the finding because there is no consistent interpretation.

For Title I audits that are still in process in that region, auditors are increasingly inclined to substitute procedural for financial findings just to close the book on Title I. Another official put it this way: "We can't present a united front to the SEA. We think one thing and OE thinks another. If we're not going to be supported, then we'll go to procedural-type findings."

In sum, the long-term effects of this dispute may have serious consequences for the program. While States may now be confused about the signals they receive from OE with respect to the supplementation provisions, there will be no confusion about the message if the present trend continues and HEW ultimately ceases to monitor and enforce the provisions altogether.

CHAPTER IV. STATE ADMINISTRATION

The States exercise important influence over the operation of the Title I program. State rulemaking and management, which include responsibility for the actual approval and oversight of district activities, have an impact on programs over and above that extended by the Federal legal framework and Federal administration.

In performing their responsibilities States are expected to complement Federal management and implement Congressional policy. They are expected to provide managerial direction to districts so that quality services of a supplementary nature are delivered at the local level to the intended beneficiaries.

This situation can place SEAs in an ambiguous position, because their primary responsibility is the implementation of state, not Federal, educational policies. Moreover, SEAs frequently have limited influence over LEAs and must rely on negotiation and persuasion in dealing with them. SEAs cannot manage Title I in isolation from these pressures, and Federal leverage on state Title I administration is therefore limited.

Despite these influences, the Federal Government can exercise some control. Federal administrators can and do exert significant influence through the legal framework and through compliance monitoring and enforcement. Congress also affects state administrative activities through the level of funding provided for state Title I administration, and through restrictions on its use.

NIE's research on state administration of Title I has focused on these two mechanisms. The legal framework was examined to see if it clearly specified state administrative responsibilities, and, if not, to identify the consequences at the state level.

Research on state practices in the administration of Title I examined the uses to which SEAs put their administrative funds, as well as the consequences of different patterns of state administration for the quality of local Title I programs.

THE TITLE I LEGAL FRAMEWORK FOR STATE ADMINISTRATION

The current legal framework provides 11 major administrative responsibilities for States, including grant distribution, application approval, rulemaking and interpretation, monitoring, enforcement, technical assistance, information dissemination, fiscal management, evaluation, reporting to the Federal Government, and complaint resolution.

These responsibilities are generally prescribed by the provisions of the Title I statute itself or by the General Education Provisions Act (GEPA), the legislation that defines the general Federal role in education and the Federal Government's relation to SEAs and LEAs. State responsibilities are further defined by regulation, guideline, or by other written communication with States.

Certain aspects of the Federal formal framework concerning state administrative responsibilities, when supplemented by the informal legal framework, are clear. For example, the authority to approve LEA Title I applications is expressed directly.

However, not all of these responsibilities are clearly defined, either by legislation or regulation; some of them are merely implied in these documents. Duties which are only implied, and not made explicit, cause States to differ widely in their understanding of what their responsibilities for Title I are. Where such implied authority exists, widely varying state policies have resulted.

For example, the lack of clarity in the Federal legal framework causes problems in three areas:

- SEA rulemaking authority is unclear.
- SEA enforcement authority is also ambiguous.

- Audit procedures (and other enforcement techniques) are not clearly specified.

Rulemaking Authority

The regulations expressly authorize SEAs to promulgate rules only in the area of parent involvement. However, they also require LEAs to furnish members of parent advisory councils with copies of certain documents, including "state Title I regulations and guidelines."[1] Because that provision does not limit the state Title I regulations and guidelines to the area of parent involvement, it is taken to imply that SEAs may issue rules in other areas, as long as such rules do not contravene any expressed requirement in the Title I statute or regulations. Federal program guides and written communications with States have also implied that SEAs can develop their own rules for the administration of the program. For example, OE's explanatory booklet, "Title I ESEA: How it Works," indicates that States can establish additional rules consistent with the Federal framework.

From these affirmative references, it is reasonable to conclude that OE expressly permits SEAs to promulgate state Title I rules and guidelines concerning parent involvement and that SEAs have the implied authority to make rules affecting other aspects of Title I, e.g., program design and concentration.

However, the extent of this authority is not clear to all States, and their use of the authority varies widely. All SEAs have issued some general policies and procedures for Title I. Nevertheless, although some SEAs make rules about the design of local Title I services (e.g., LEAs must focus on grades K-3 and include individualized instruction plans), others refrain from doing so because they feel they lack express authority to impose additional criteria or restrictions on local educational policy. In some States, the SEA is willing to try to influence LEAs only if it can point to a specific provision in the Federal regulations authorizing the SEA to expand upon the rules established by the Commissioner of Education.

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[1] 45 CFR Section 116.17(0)(2)(ii)(1975).

Enforcement Authority

The legal framework is also unclear about States' authority to enforce some Title I requirements. Several state powers are clearly and unambiguously defined. For example, state authority to disapprove applications that do not conform to the legal framework is undisputed.

However, other powers are only implied, and the manner in which States implement them is quite inconsistent. The most potentially troublesome is the authority of the State to suspend or withhold funding from an LEA.[2]

The Title I regulations expressly authorize States to withhold LEA funds only in the case of comparability violations at the local level. However, authority to withhold or suspend funds may be implied from a provision in GEPA that indicates that LEAs may request a hearing from their SEAs if they fail to provide the districts any part of their Title I grants.

Some SEAs have interpreted this provision to mean that they have authority to withhold or suspend Title I funds for any violation. A few believe they have authority to withhold funds for violations of state Title I policies. One state Title I director, however, feels he can withhold funds only for a comparability violation. He stated that "I don't know what we could do" if a violation other than comparability were discovered after application approval, and the LEA refused to correct it.

States also vary in the way in which they implement the authority they consider themselves to have. Some States believe that money withheld must ultimately be returned to the LEA, whether or not a hearing determines that the LEA had violated

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[2] Enforcement-related provisions are scattered throughout the Federal legal framework, and there is no separate section in the Title I regulations that contains a list of SEA enforcement options and sanctions and the authority to impose them. In fact, there is no separate section for SEA "enforcement." The regulations refer only to the obligation to enforce.

Title I requirements. Others, however, believe that the LEA loses the funds it would normally have received between the State's decision to withhold funds and the hearing at which the issue was settled.

Audit Procedures

Even when the nature of the state function is clear, the Federal legal framework does not always establish clear standards for its execution. The GEPA regulations require that SEAs audit local Title I programs at least once every 2 years to determine both "fiscal integrity" and compliance with the regulations. However, neither the Title I nor the GEPA regulations contain standards for the conduct of audits.

Early Title I guidelines established some audit standards for Title I, but these are not included in the current Federal regulations. Although the Comptroller General's audit standards are intended for application "to audits of all government organization's programs, activities, and functions—whether they are employed by federal, state, or local government. . . ,"[3] there is no reference to such standards in either Title I or GEPA regulations.

In addition, the GEPA regulations require that SEAs have a "systematic method" to assure timely and appropriate resolution of audit findings and recommendations. Yet neither the Title I nor the GEPA regulations contain minimum standards for audit resolution. In the absence of such standards, SEA audit resolution policies vary widely. Some SEAs do not have such policies; others have only informal procedures for resolving audit findings. In the States that have written audit resolution policies, very few have established deadlines for the completion of the process.

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[3] Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, by the Comptroller General of the United States, General Accounting Office (1974 reprint), p. 1.

Implications For Management

It is clear that rulemaking, monitoring, and enforcement are central to the quality of program administration. The failure of the legal framework to provide clear guidance to States about these responsibilities has a significant impact on the ability of States to administer the program. In fact, many state Title I directors urged that clearer and more specific directions on the authority and responsibility of the States be provided. As one director indicated, "If it doesn't say it in the 'regs' expressly, I can't do it." This results in wide variations in the quality and comprehensiveness of the policies that States have developed for Title I.

Of equal significance was the discovery by the Survey of Legal Standards that in some States administrative policies may not be in full compliance with all the legal requirements. Some state application forms request only limited information from LEAs. These States may be approving LEA programs that do not meet every Title I requirement.

A review of SEA audit policies also revealed that several SEAs do not conduct audits of compliance with every regulation, as required by law, but only audits of total expenditures. Thus, the failure to provide explicit direction about state responsibilities can ultimately lead not only to wide variations in policy but also to some potentially noncompliant behavior on the part of States.

STATE MANAGEMENT

In addition to examining the clarity of the policies defining how States should administer Title I, NIE also funded a study of state administration to explore state management activities and the impact of these practices on local school districts.

The Study of State Administration had two major components. The first was a national survey of state administration practices, based on interviews with Title I officials in 46 States. The survey focused on how States perform their responsibilities for administering Title I, and how they use their special administrative funds to support those activities.

The second component was a series of case studies in eight States. Indepth interviews at the state level and in four local districts in the eight States gave information on how state management activity influenced the way in which local districts operated their Title I programs. The eight states were selected to provide variation in geographical location, OE assessment of administration performance, metropolitan/rural character, existence of state-funded compensatory education, and state Title I administration characteristics. Within each State, one large urban, two medium-sized, and one small, rural LEA were identified for study. The case studies also attempted to include districts that had either experienced compliance problems, demonstrated sound management, or experienced major changes in local program administration.

Administrative Activities

Prior examinations of state Title I administration[4] indicated that States vary considerably in how they administer Title I. These studies suggested that although some States actively enforce the entire legal framework, others function essentially as buffers between the Federal Government and the LEAs in order to preserve local district autonomy. Moreover, States varied widely in executing specific administrative responsibilities such as monitoring.

The Study of State Administration corroborated the finding of widely differing state practices. States vary greatly from one to another in the way they disseminate information, provide technical assistance, and enforce compliance.

For example, the vigor of state dissemination and technical assistance activities fluctuated widely. On the average, States sent seven general information mailings to every LEA in fiscal year 1976. However, some States reported no mailings, while others reported as many as 30.

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[4] Joel S. Berke and Michael W. Kirst, Federal Aid to Education: Who Benefits? Who Governs? (Lexington: Lexington Books, D.C. Heath and Co., 1972) and Peter G. Briggs, A Perspective on Change: The Administration of Title I of the Elementary and Secondary Education Act. (Mimeographed, Washington, D.C.: The Planar Corporation, October 1973).

During the same period, some States held no conferences to disseminate information to districts on the regulations, on application procedures, or on model Title I programs. On the other hand, one State reported 500 such conferences during fiscal year 1976. The average number of conferences in a State was 22. Individual visits to school districts in fiscal year 1976 also varied: one State reported having conducted over 1,000 of these visits; another reported none. States averaged approximately 125 individual visits to districts.

These wide variations in patterns of state administrative activity are not surprising in light of two important factors. First, as indicated earlier in this chapter, there is a considerable lack of clarity in the Federal legal framework about precisely what States are supposed to do. Second, there are substantial variations among States in the staff they have available to administer the program and in the size of their workloads.

State Staffing Practices.--The variations in state activities are due in part to differences in the numbers of employees hired to administer Title I. The numbers of professional and nonprofessional staff, in full-time equivalents (FTE), employed to administer Title I ranged from a minimum of 3 to a maximum of 101 in fiscal year 1976. On the average, 18 staff members were involved in Title I administration. The number of professional staff ranged from 2 to 58 (the average was 11), and the nonprofessional staff ranged from 1 to 43 (the average was 7).

Administrative Set-Asides

Although many factors affect SEA staffing practices, the funds available for state administration are clearly an important determinant. The absolute size of the administrative set-aside differs widely among States.[5] Fourteen of the States in NIE's sample received the $150,000 floor amount; three States, or 7%, received over $1 million in state administrative dollars.

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[5] In the initial formulation of the Title I program, Congress specifically earmarked 1% of a State's program funds for administration. This basic level has not changed since then. In 1968, Congress added a second provision to the funding formula for state administration to aid States with small overall allocations. This addition provided that a State's administrative allocation could not be less than $150,000. This provision affected States with program allocations of less than $15 million. Currently, States are entitled to 1% of their Title I allocation for administration or $150,000, whichever figure is greater.

The Federal formula for distributing administrative funds takes only the size of States' Title I grants into account. It does not consider the fact that States have different numbers of school districts. A State with a small Title I grant might have a large number of districts, while a very populous State might have a relatively small number of districts. This is particularly important since the state Title I office must pay each Title I district some attention.

As an indicator of the administrative workload at the state level, the amount of the set-aside per district was calculated for each State. The results are displayed in Table 2.

TABLE 2

ADMINISTRATIVE SET-ASIDE PER STATE AND PER LEA, FISCAL YEAR 1976

	Average	Minimum	Maximum
Title I set-aside per State	$393,000	$150,000	$2,000,000
Set-aside per Title I LEA	$ 2,692	$ 343	$ 13,060

As the table shows, States have an average of almost $2,700 per district for administration purposes. But one State has only $343 per district, and one has over $13,000. Quite clearly, the amount of money available for administration for each district sets limits on the extent of state activity.

Use of the Set-Asides

Differences among States in the resources available for administration are accentuated by the substantial variation in the emphasis placed on hiring staff. In 1973, the most recent year for which complete data on set-aside expenditures were available, one State spent less than 35% of its set-aside on staff. At the other extreme, one State used 97% of its set-aside to pay staff.[6]

Table 3 displays the different patterns of staff-related expenditures evident in fiscal year 1976.

TABLE 3

NUMBER OF FTE PER $100,000 SET-ASIDE, FISCAL YEAR 1976

	Minimum	Maximum	Average
Professionals' FTE	1.26	4.75	2.79
Nonprofessionals' FTE	.39	5.63	1.89
Overall FTE	1.94	7.37	4.61

Significance of State Staffing

The use of the set-aside to hire staff has an important effect on the way the State interacts with its LEAs. Data from the Study of State Administration suggest a relationship between state staffing practices and the quality of administration at both the state and local levels. On the basis of a "quality" measure derived from four indicators of compliance,[7] those States identified as having administrations of poor quality had lower staffing levels than would be expected, given the size of their set-asides, the proportion of population that was urban, the number of Title I districts, and their organizational characteristics.

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[6] In fiscal year 1973, States, on the average, spent 78.1% of their administrative dollars on staff (56.0% for professional staff, 22.1% for nonprofessional staff), 13.4% for consultants and contracted services, 0.4% for equipment, and 8.1% for other expenditures. Included in other expenditures are indirect costs; States have negotiated variable indirect cost rates, varying from 0% to as high as 35% of the total set-aside, according to one state Title I director. Some States also carried over administrative funds from the previous year. The use of these funds was not broken down by category.

The case studies also indicated that the crucial actions for LEA compliance are those that demand staff. One of these is staff attention to the application process as a vehicle for providing direction to local districts. Field interviews showed that providing careful assistance to districts in completing the application, reviewing it carefully, and using the completed document as a basis for monitoring and technical assistance were all important state administrative activities.

In addition, the greater the efforts a State made to clarify, record, and disseminate both Federal and state regulations, the less likely its districts were to experience compliance problems. The case studies showed that States with adequate staff to explain to districts what they can and cannot do under the regulations are less likely to have district programs out of compliance.

Similarly, the degree of personal interaction between state Title I officials and local district personnel appears to be strongly related to the general quality of local district administration. Case study interviews showed that the more time that state staff spent with local staff, the greater the likelihood that the local programs would be well administered. Application workshops, monitoring visits, or technical assistance visits appeared equally valuable in improving LEA performance.

Together, these findings suggest that staff-intensive activities have a substantial impact on local administration. However, not all States maximize the number of staff members they have with their Title I set-asides. As Table 4 illustrates, increasing the set-aside does not guarantee that States will increase expenditures on staff, relative to other costs.

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[7] These indicators were: the dollar amounts of initial audit exceptions, the dollar amounts of sustained audit exceptions, a ratio of the initial exceptions to the final sustained exception, and OE judgments about the quality of state administration. The rankings of States on each of the four indicators were compared, and the 10 States that appeared at the bottom of three of the four indicators were identified as States with poor-quality administration. The eight States that appeared at the top of three of the four indicators were identified as having high-quality administrative practices.

TABLE 4

NUMBER OF FTE PER $100,000 SET-ASIDE
$150,000 SET-ASIDE VS 1% SET-ASIDE
FISCAL YEAR 1976

	Professional FTE	Non-Professional FTE	Total FTE
States with $150,000 set-asides	2.7	1.9	4.6
States with 1% set-asides	2.8	1.8	4.6

In general, the size of each State's set-aside limits the absolute numbers of staff members it can hire, but the emphasis on staffing varies from State to State, without respect to total funding. Some States with small set-asides hire more staff members per dollar than States that have large amounts of funds for administration.

CHAPTER V. STATE COMPENSATORY EDUCATION PROGRAMS

INTRODUCTION

Title I is not the only source of funds for compensatory education. Since 1963, when California enacted the first state compensatory education (SCE) program, approximately one-third of the States have initiated efforts to provide services for the disadvantaged. In fiscal year 1976, 16 States allocated more than $364 million for the education of children disadvantaged by virtue of poverty, language, level of academic achievement, or location[1] (see Table 5).

These programs provide substantial additions to the funding available for compensatory education. In 1976 appropriations for these programs represented an increase in the level of support for compensatory education of almost 20% of the national Title I funding.

In 1974, officials from New York, Michigan, and California testified before Congress about their state programs. At that time, information available on state programs was fragmentary, and some members of Congress expressed great interest in the characteristics of state programs, their relationship to Title I, and the extent to which they might provide patterns for modifying the Federal program.

This chapter addresses questions about state compensatory education programs raised by members of Congress during Title I deliberations. It falls into three parts:

- Descriptions of state compensatory education programs currently in operation, including funding, services provided, and administration

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[1] For this report NIE has defined state compensatory education programs to include those that provide funds to school districts on the basis of need and require that identifiable services be delivered.

TABLE 5

TITLE I AND SCE FUNDING LEVELS, FISCAL YEAR 1976*
($ in thousands)

	Title I	SCE
California	$154,143	$ 90,400**
Connecticut	19,673	6,473
Georgia	48,060	10,247
Hawaii	5,874	1,800
Maryland	31,660	13,000***
Michigan	85,885	23,600
Nebraska	9,334	600
New Jersey	58,747	--†
New York	200,247	140,300
Ohio	57,553	33,000
Oregon	18,331	1,000††
Rhode Island	7,186	2,000
Texas	125,574	25,400
Utah	6,425	800
Virginia	41,466	9,294†††
Washington	25,972	4,972
Wisconsin	32,003	1,500
Total	$928,133	$364,386

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*Florida is about to start a new SCE program this fall.

**Includes only the Educationally Disadvantaged Youth program.

***Program provides money only for city of Baltimore.

†New Jersey program began in 1976-77 school year, i.e., fiscal year 1977; it was funded at a level of $33 million.

††Program provides money only for city of Portland.

†††Pilot program terminated in June 1976.

- Discussion of whether the programs provide possible models for Title I

- Discussion of the extent to which Title I currently affects state incentives to introduce compensatory programs and to operate them efficiently

NIE obtained information on state compensatory education programs from two major sources.[2] First, as part of the Survey of Legal Standards, an extensive analysis of the relationship between the legal frameworks of Title I and of state programs was conducted; this analysis was complemented by descriptive information on several state programs. Second, NIE collected detailed written descriptions of compensatory programs from 14 of the States currently funding them, conducted interviews with the personnel in these States, and held conferences with state and local program coordinators to discuss the operation of state programs and their relationship to Title I.

STATE COMPENSATORY EDUCATION PROGRAMS

NIE collected descriptive information from the conference participants on:

- Funding levels

- Funding mechanisms and district eligibility criteria

- District program requirements

- Services provided

- Administration

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[2] See also State Compensatory Education Programs, DHEW Publication No. OE75-07107 (Washington: GPO, 1975) and Mary Pat Pfiel, State Compensatory Education and Bilingual Programs, Research Memorandum, (Educational Policy Research Center, Stanford Research Institute, 1975).

Funding Levels

States varied considerably in the funding levels of their compensatory programs. Two programs--New York's and California's--accounted for 63% of the $364 million that States spent on their own compensatory education programs in fiscal year 1976. Nebraska's program, funded at $600,000, was the smallest.

In some cases, state dollars substantially increased the funding available for compensatory education. For example, in 1976 New York's Pupils With Special Educational Needs (PSEN) program accounted for approximately 41% of the combined Federal and state funding for compensatory education. California's Educationally Disadvantaged Youth (EDY) program provided 37% of the total Federal and state dollars available for compensatory education in that State, while Wisconsin's program provided about 5% of total compensatory funds.

Funding Mechanisms and District Eligibility Criteria

State compensatory programs provide allocations to districts by either a formula or a competitive grant system. Twelve of the 14 States examined allocate funds on the basis of a formula; 2 award grants on the basis of a competitive application process.

Eight of the 12 formula States distribute funds on the basis of economic disadvantage, either alone or in combination with related measures (see Table 6). Two, New Jersey and Rhode Island, use Title I eligibility counts directly; the other six--California, Connecticut, Nebraska, Ohio, Texas, and Utah--use various measures of low income in their formulas.

Two other States, Michigan and New York, allocate their funds solely on the basis of achievement criteria, and the remaining two formula States use neither income nor achievement. In Georgia, all districts are eligible; in Oregon, on the other hand, a formula based on the density of the district's population is used, and only the State's largest district is eligible for funding under the formula.

TABLE 6

CHARACTERISTICS OF FORMULA-BASED SCE PROGRAMS

	District Eligibility	Attendance Area Eligibility	Child Eligibility
California	Allocation based on index of bilingual, poverty, pupil transiency	School ranked by educational need District sets cutoff Priority to elementary schools	Below Q_2 in reading or handicaps due to language, culture, or environment Concentration on the youngest
Connecticut	Allocations based on 1970 census data and poverty, AFDC	No requirement	Priority to low-income and low-achieving children Priority to preschool and early elementary Minimum of $300/child to be spent
Georgia	All are eligible	No requirement	Grades 1-4 (1975-76) Grades 1-5 (1976-77)
Michigan	Eligible if 15% of K-6 students need improvement Students identified by statewide assessment $200/eligible student	No requirement	Lowest achievers in grades K-6
Nebraska	Districts must apply Allocations based on number of disadvantaged served in special programs in previous year State-aid formula includes weighting factor	No requirement	No requirement

TABLE 6
(Continued)

	District Eligibility	Attendance Area Eligibility	Child Eligibility
New Jersey	1976-77 used Title I 1977-78 used number of students enrolled in remedial reading previous year	Districtwide	Low-achieving
New York	Allocations based on proportion of students performing below 23d percentile in reading and math Each low-performing student generates additional 25% of state aid	No requirement	Students 2 or more years below grade level Priority to grades 1-6 Concentration on reading, math, and bilingual
Ohio	Districts with more than 50 AFDC children Allocation based on children aged 5-17 receiving AFDC	Only Title I schools	Any child in Title I school Priority to children with greatest academic, emotional, and health needs
Oregon	Districts with ADM of 50,000+	Operates in 10 of 27 Title I schools (most disadvantaged)	Socially or culturally deprived
Rhode Island	Allocations based on districts' proportion of state Title I allocation	Schools ranked according to Title I criteria Priority to Title I-operating schools Services to non-Title I schools only after all needs met in Title I schools	Similar to Title I

TABLE 6
(Continued)

	District Eligibility	Attendance Area Eligibility	Child Eligibility
Texas	All districts Allocations based on low income, using Title I criteria $40/child	Similar to Title I	Title I criteria "Add-on" to Title I
Utah	All districts Allocations determined by proportion of 7 categories of disadvantaged	No requirement	Must be in one of 7 categories of disadvantaged children (e.g., low-achieving, bilingual, economically disadvantaged) District option about which categories to serve
Washington	Competitive grant process in which 39 districts were successful in 1975-76	No requirement	5 different categories of children not succeeding in school
Wisconsin	Competitive grants to any school district or nonprofit, nonsectarian agency	As specified in district's grant proposal	Age 3 through secondary school Low achievement Priority to preschool and primary

Source: Information obtained from OE and from state program coordinators.

Washington and Wisconsin rely on competitive applications from districts to distribute funds. Neither State sets any criteria for district eligibility and all districts are eligible to compete for funds.

District Program Requirements

Most state programs do not establish comprehensive requirements for within-district funds allocation and program development similar to the Title I regulations. The most specific requirements generally concern school attendance areas and students eligible for funds, corresponding to the Title I eligibility and targeting regulations. In addition, districts frequently are encouraged to develop programs providing specific types of services.

Funds Allocation Requirements.--The 14 States demonstrate some variability in their approach to funds allocation requirements.

Attendance area eligibility: Seven of the States with formula-based programs do not specify a criterion that districts must use when deciding schools that are eligible for funding. The same is true of Washington and Wisconsin, which have competitive grant applications.

Five of the formula States, however, do specify school eligibility criteria. California uses achievement results to determine school eligibility, and the remaining four States target funds exclusively or primarily to Title I schools (i.e., to schools in low-income areas).

Student eligibility: In most States, student eligibility is determined by achievement criteria. Three States specify that the Title I student eligibility criteria shall be used to determine eligibility for the state program. Similar criteria, such as scoring below the 30th percentile on standardized tests, are specified in six other States.

The remainder of the 14 States varied in their criteria. Oregon and Utah require that children be either poor or low-achieving; in Georgia's program all children in specific grades are eligible.

Both Washington's and Wisconsin's competitive grant programs are directed to low-achieving children. In Wisconsin, 75% of the participating children must be identified by both economic and social factors, while 25% can be identified by either an economic or social factor. Washington's Urban, Rural, and Racially Disadvantaged program has both an academic achievement and a preschool component. In the achievement component, 75% of the children must fall in the lowest ranges of test scores. In contrast, the preschool component is designed so 75% of the children must come from low-income families.

Although some programs might include children who are too high achieving to be eligible for Title I services, only New York's PSEN program makes specific allowance for average or high-achieving students. New York's basic eligibility criterion for students is that they perform 2 or more years below grade level; however, as many as 30% of all children being served in the district's compensatory classes can be students who are not low-achievers.

Although some States specifically intend that funds be used for students in low-income schools, most programs are designed to serve students in any school in the district rather than in specified schools.

Other funds allocation requirements: With respect to guarantees of supplementation, only Nebraska allows districts to use compensatory funds as part of their general revenue. Four other States have no clear policy requiring state compensatory funds to supplement other state and local expenditures. Elsewhere, the program is intended to provide special services for eligible children, and districts frequently are given specific instructions to that effect. However, few of the state programs have stringent requirements of the type embodied in the Title I comparability or supplanting regulations.

Program Development Requirements.—All States make an effort to inform participating districts about the purpose of the compensatory education program and the ways in which the legislature intended funds to be used. Beyond this, however, there is considerable variation in the extent to which States impose limits on the types of programs districts can establish.

Four States--New York, New Jersey, Texas, and Georgia--strongly encourage districts to use their funds for reading programs. The rest generally permit other instructional services, such as bilingual instruction. Two-thirds of all States permit money to be used for auxiliary services such as transportation, food, medical care, and counseling, while the remainder permit expenditures on instructional services only.

Planning and evaluation requirements vary a great deal. Some States have planning, needs assessment, and evaluation requirements similar to those of Title I. In California, districts and schools are required to develop comprehensive plans, assess local needs, state goals, conduct evaluation, and guarantee community involvement. Similarly, New York's districts must make a detailed 3-year plan, and Ohio's districts must also plan programs based on specific goals determined by a needs assessment. In Michigan, performance in the statewide assessment is an important element of the state program.

By contrast, Oregon and Nebraska make no formal program development requirements. In Oregon, the SEA has no formal oversight authority, and in Nebraska funds can be used as a part of general revenues. Georgia requires no plan or program evaluation, although funds can be used only for instructional personnel. Other States fall between these extremes in their requirements. For the most part, these States are satisfied with the submission of a plan and program evaluation. Finally, a small number of States have parent involvement requirements modeled on Title I, but a comparable level of parental involvement is rare.

Services Provided

Services provided through the various state programs resemble those provided under Title I. Most often, funds are used to provide reading and mathematics instruction for children at the elementary level; they might also be used for bilingual programs and for such auxiliary services as food or medical care. If States discourage use of state funds for auxiliary services, districts can pay for auxiliary services with Title I and pay for instructional costs with state monies.

A number of States either limit the grades served by their compensatory education program or require that certain grades by given priority. As is the case with

Title I, funds are most often used for elementary pupils. However, in a number of cases, state funds are used to complement Title I and directed specifically to different grades. For example, Utah's program is concentrated almost exclusively on senior high school students.

Several examples illustrate the range of services provided through state compensatory programs. California's EDY program and Michigan's Chapter 3 program bring Title I children additional services similar to those provided under Title I. Compensatory programs in Texas, Georgia, New Jersey, and New York primarily provide reading instruction. In Rhode Island, more than two-thirds of the funds going to the State's largest district pay costs associated with desegregation.

In general, services delivered through state compensatory programs are similar to those funded under Title I. While the districts and States might fund programs to meet unique needs of bilingual education, or transportation for desegregation, for example, they have not attempted to deliver a different kind of program. However, some States do provide services to groups of students not typically served by Title I, or increase the level of services provided to Title I students. These States clearly help augment the services provided under Title I.

Administration

The most important single fact about the administration of stute compensatory education programs is that few States invest much time, effort, or money in it. Just as the framework of regulations laid down for state programs is, in general, far less comprehensive and stringent than for Title I, so the degree of monitoring and technical assistance provided is far smaller. Some state programs provide such low levels of administrative funds that only a coordinator in the state office can be provided. Only three States provide substantial funds for on-site monitoring or technical assistance.

Despite the small investment of state funds, many States do attempt to administer their programs. This is usually accomplished with staff paid from the Title I set-aside. In some States where the Title I and state compensatory offices are consolidated, nearly all administrative costs are paid by Title I. In most States where the

Title I and state offices are separate, most technical assistance and monitoring of state programs take place in the course of routine Title I site visits. Most state programs rely heavily on Title I to subsidize their administration.

Washington and Wisconsin, the two States that conduct competitive grant programs, are faced with unusual management requirements. In one sense, the state agency takes an active role in shaping compensatory programs because it determines the districts that will receive grants. However, after state grants have been made, participating districts are responsible for monitoring their own use of funds. The SEA then conducts end-of-year evaluations of each district's projects.

California, New York, and Ohio have developed comprehensive monitoring procedures including both periodic reporting from the districts and site visits by state agency personnel.

The remaining States vary in the procedures used in monitoring and providing technical assistance. In Michigan, for example, the Chapter 3 program was designed originally to hold districts accountable for the results of their programs, only as measured by a statewide assessment. Although some elements of that basic model are still in effect, the State now is moving toward an application process and a system of site visits modeled after Title I.

Georgia, on the other hand, has no planning or evaluation requirements, but a detailed description of each district's program is submitted to the SEA at midyear. In Nebraska, districts are required only to submit an application. Portland, Oregon, reports directly to the state legislature.

In a number of cases, such general fiscal oversight is the limit of SEA activity, with the State doing little in the way of evaluation or technical assistance. Texas is presently developing an application procedure, but the structure of compensatory programs is still determined by the districts; the districts submit evaluations of their own programs based on pre- and post-testing while the State maintains liaison with the districts through site visits. In Utah, districts evaluate their own programs according to objectives the districts themselves have set.

The stance assumed by a state agency in relation to administration of its own compensatory program depends in part on the way the legislature has designed the program. In some States, the legislature is far more concerned with disbursing revenues to the districts than with guaranteeing that services are received by the target population.

However, even States with elaborate program requirements and administrative procedures typically have inadequate resources for intensive auditing or rigorous enforcement procedures. Therefore, they rely heavily on the services of Title I staff.

One consequence of the relatively low funding for administration is that monitoring of supplanting is almost nonexistent in state programs. Even in States that expressly require state funds to be used for supplemental services, districts carry the burden of insuring supplementation. Low staff levels for state administration have caused the States to concentrate instead on developing detailed accounts of the amounts spent on eligible children or for eligible programs.

STATE PROGRAMS AS MODELS FOR THE IMPROVEMENT OF TITLE I

A major objective of NIE's analysis of state programs was to determine if characteristics of these programs suggest possible changes or improvements in the conduct of Title I. There are three important areas in which this might be the case: the methods used for allocating funds, techniques for program administration, and the design of programs and services at the school level. Of these, the methods used for allocating funds to state compensatory programs offer the most plausible alternative models for Title I.

A number of States have devised novel ways of allocating compensatory education funds. Of these, Michigan's achievement-based funding system is probably the best known. The competitive grants program adopted by Washington and Wisconsin could also be used in allocating all or some Federal funds. Any of these approaches might be considered for a Federal program providing special services to educationally disadvantaged pupils. Another of NIE's reports will consider the costs and feasibility of using achievement criteria to allocate Title I funds. No firm information about the problems of using a competitive grants system for a national compensatory education program is available.

State programs have developed little in the way of new approaches to program administration, monitoring, or enforcement. Most programs have eligibility and targeting requirements that echo those of Title I. The formal restraints on the way districts use funds, and their regulations for program development, generally are weaker than similar requirements attached to Title I and certainly are not novel. To the extent that States try to guarantee that state compensatory funds are used for supplementary services, rather than general aid or tax relief, they generally rely on procedures similar to Title I's system of requirements and monitoring, and they also depend heavily on the staff paid for from the Title I administrative set-aside.

Thus, state compensatory programs do not provide alternative and more effective ways of guaranteeing that Title I funds are used to supplement state and local money at the district, school, and pupil levels, and that beneficiaries receive a comparable level of services. Rather, they provide examples of compensatory education programs in which fewer restrictions are placed on the allocation and disposal of funds by district educators.

Finally, there is no evidence that the design of state and Title I services is markedly different. State funds are most often used to complement and augment Title I programs rather than to establish distinct approaches. No State told NIE of any instructional services delivered under its program that are not delivered somewhere under Title I. In general, therefore, it would appear that state compensatory education programs do not provide a pattern for fundamental changes in the Federal effort.

THE RELATIONSHIP BETWEEN STATE PROGRAMS AND TITLE I

In addition to examining their possible contribution to improving the design of Title I, NIE also analyzed the extent to which state programs are helped or hindered in their operations by the Federal program. State compensatory programs greatly strengthen the services available to eligible pupils; it is important that Title I contribute as much as possible to the development and effective operation of state programs. NIE research and conferences, therefore, focused on:

- The existence of tensions between the Title I requirements and those of state programs

- The degree to which Title I complements and strengthens state programs

- The future of state compensatory education programs

Tensions Between State Compensatory Education Programs and Title I

State coordinators identified a number of problems in the relationship between Title I and their own compensatory education programs. Nearly all of these problems arose from lack of clarity in interpretations and guidelines issued under Title I, and from inconsistencies in Federal monitoring and enforcement. The special exemption from comparability requirements granted in the 1974 Education Amendments apparently removed the one specific barrier the Title I legal framework presented to the implementation of SCE programs.[3]

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[3] Before the enactment of the 1974 Amendments to Title I, LEAs providing state-funded compensatory services usually had to provide them in all Title I schools before they could be provided in non-Title I schools, because providing substantial amounts of state-funded services in non-Title I schools would raise the average level of expenditures in those schools. Under comparability requirements, each Title I school is compared individually with the average of non-Title I schools. If a single Title I school did not receive state compensatory services, it would not meet that new level of expenditures and thus would be out of compliance with the comparability requirement.

As a result of revisions in the legal framework resulting from the Education Amendments of 1974, an LEA is now permitted to exclude from its comparability computations expenditures for "comparable state or local programs for educationally deprived children." To qualify for an exemption from comparability, SCE programs must meet four criteria:

(1) The funds must be used for educationally deprived children.
(2) The funds must be used for a program that is evaluated.
(3) The funds must be used for special, supplementary purposes.
(4) The LEA must be accountable to the SEA for compliance with the first three requirements.

According to state coordinators, Title I does not interfere with the state compensatory education programs except where Title I itself is difficult to implement. The problems with the clarity of Federal interpretation and management of Title I identified in Chapters II and III of this report cover all the concerns expressed by state coordinators. Thus, Title I causes problems with state programs only insofar as its legal framework is not administered clearly by the Federal Government.

Despite the relative scarcity of complaints from the coordinators about the relationship between the Title I legal framework and state compensatory programs, two specific issues about possible changes in the Title I framework have been identified.

The first concerns the distribution of state compensatory funds in areas ineligible for Title I. The Title I legal framework does not require LEAs to favor low-income areas with respect to the distribution of SCE funds. Under Title I, educationally disadvantaged children residing in low-income areas must receive only their fair share of SCE funds. Some state and local coordinators maintained that this policy should be changed to permit LEAs to use SCE funds solely in areas that are not eligible for assistance under Title I. Although such a change is possible, modifying Title I to permit it would mean that educationally disadvantaged children residing in poor areas and not receiving any assistance under Title I would be penalized in the distribution of SCE funds.

The second issue concerns California's Early Childhood Education (ECE) program. This program is designed to restructure the school environment in grades K-3, by providing services to all children in these grades. Because ECE provides funding for the whole school and does not target funds specifically on educationally disadvantaged children, it does not qualify as a state compensatory program under the Title I legal framework and cannot be exempted from comparability. In the distribution of ECE funds, therefore, California districts face the same problems that districts in other States faced before the 1974 Amendments regarding the comparability exemption. California has proposed a general waiver of the comparability requirements for ECE. OE has not responded because it lacks statutory authority to issue such a waiver.

Importance of Title I to State Programs

The coordinators of state compensatory programs agreed that Title I was necessary for the success of their own efforts. Title I established the principle of special assistance to disadvantaged children and created a model that others followed. Without it, they argued, few States would have initiated, or would continue, funding for this special population. In addition, they expressed the opinion that loosening Title I requirements would undermine rather than strengthen SCE efforts.

Most coordinators noted the strong fiscal pressures on both state and local education agencies. School districts in every State face critical shortages of local revenues needed to sustain general educational services. Under these circumstances, coordinators rely on Title I's funds requirements as a model for SCE programs and as a source of legal support. Without them, the coordinators doubted whether state agencies would be able to resist the pressures to use state money to alleviate general fiscal crises. In addition, as noted above, they rely on Title I for administrative funds.

As one local coordinator stated:

> We cannot finance remedial programs locally: we have to do it through state and Federal dollars. That is why we have to ensure that the (Federal) categorical grant process does not ultimately become block grant because (the funds would be distributed without regard to need for compensatory education). The Title I program in the State of . . . works, the whole concept, and consequently, we feel that state compensatory education will work. . . If you want to see that continued in the State of . . . , then do not change Title I from categorical to block grant. Do not take away powers of the State Department.

Clearly, compensatory education administrators are interested in maintaining the identities of their own programs and feel that is the best way to guarantee special services to the client groups. Officials with more general concerns, such as chief state school officers and local superintendents, might argue that funds are needed elsewhere to keep schools open and meet rising educational costs, and that comprehensive regulations for the use of funds deny them the flexibility they need in planning educational programs as a whole. However, it does seem probable that if Title I requirements were loosened, fewer resources would be used to provide special and supplementary services for disadvantaged pupils. Title I and state compensatory programs can keep their specifically compensatory character only if a system of requirements like that of Title I is maintained.

The Future of State Programs

Most state coordinators reported that their States' programs were regarded as successful and had strong support in the legislatures. Some expected their programs to continue growing incrementally. With only a few exceptions, however, state officials do not expect their programs to increase enough to rival in size their State's Title I allocation.

General fiscal crises in education appear to rule out major growth in compensatory education in any but the most prosperous States. In addition, new state priorities, including those resulting from powerful Federal incentives for expenditures on handicapped children, also limit the potential growth of state compensatory programs.

CONCLUSION

State compensatory education programs have been established in almost a third of the States and provide a significant level of funding for compensatory services.

In general, they follow the pattern of Title I, although some interesting alternative funding patterns have been developed. They target funds to the same types of pupils, and provide the same types of services. Moreover, to the degree that States try to guarantee that funds are used for supplementary services rather than general aid or tax relief, they rely on a system, similar to Title I's, of monitoring and sanctions and depend on staff funded from the Title I administrative set-aside to implement their system. Thus, state programs do not offer a better way of guaranteeing the supplementary services mandated by the Title I statute. While some of their technical features might be desirable in the Federal program, they do not offer a model that suggests fundamental changes in Title I.

Because the 1974 Education Amendments permitted the waiver of comparability requirements, most States do not perceive serious tensions between state and Federal requirements. State coordinators, instead, find Title I useful as a model and a source of help in protecting state compensatory funds from use as general aid.

In general, state programs provide services which complement and augment Title I programs. However, their continued growth is not assured. Compensatory programs must compete with other claims for state and local funds. States that have established their own compensatory programs generally can call on greater financial resources than those that have not. In a time of general fiscal crisis in education it is unlikely that many more States will initiate major SCE programs.

APPENDIX A. SECTIONS 821 AND 150 OF PUBLIC LAW 93-380

Public Law 93-380
93rd Congress, H. R. 69
August 21, 1974

An Act

To extend and amend the Elementary and Secondary Education Act of 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education Amendments of 1974".

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PART B—EDUCATIONAL STUDIES AND SURVEYS

STUDY OF PURPOSES AND EFFECTIVENESS OF COMPENSATORY EDUCATION PROGRAMS

SEC. 821. (a) In addition to the other authorities, responsibilities and duties conferred upon the National Institute of Education (hereinafter referred to as the "Institute") by section 405 of the General Education Provisions Act and notwithstanding the second sentence of subsection (b)(1) of such section 405, the Institute shall undertake a thorough evaluation and study of compensatory education programs, including such programs conducted by States and such programs conducted under title I of the Elementary and Secondary Education Act of 1965. Such study shall include—

(1) an examination of the fundamental purposes of such programs, and the effectiveness of such programs in attaining such purposes;

(2) an analysis of means to identify accurately the children who have the greatest need for such programs, in keeping with the fundamental purposes thereof;

(3) an analysis of the effectiveness of methods and procedures for meeting the educational needs of children, including the use of individualized written educational plans for children, and programs for training the teachers of children;

(4) an exploration of alternative methods, including the use of procedures to assess educational disadvantage, for distributing funds under such programs to States, to State educational agencies, and to local educational agencies in an equitable and efficient manner, which will accurately reflect current conditions and insure that such funds reach the areas of greatest current need and are effectively used for such areas;

(5) not more than 20 experimental programs, which shall be reasonably geographically representative, to be administered by the Institute, in cases where the Institute determines that such experimental programs are necessary to carry out the purposes of clauses (1) through (4), and the Commissioner of Education is authorized, notwithstanding any provision of title I of the Elementary and Secondary Education Act of 1965, at the request of the Institute, to approve the use of grants which educational agencies are eligible to receive under such title I (in cases where the agency eligible for such grant agrees to such use) in order to carry out such experimental programs; and

(6) findings and recommendations, including recommendations for changes in such title I or for new legislation, with respect to the matters studied under clauses (1) through (5).

(b) The National Advisory Council on the Education of Disadvantaged Children shall advise the Institute with respect to the design and execution of such study. The Commissioner of Education shall obtain and transmit to the Institute such information as it shall request with respect to programs carried on under title I of the Act.

(c) The Institute shall make an interim report to the President and to the Congress not later than December 31, 1976, and shall make a final report thereto not later than nine months after the date of submission of such interim report, on the result of its study conducted under this section. Any other provision of law, rule, or regulation to the contrary notwithstanding, such reports shall not be submitted to any review outside of the Institute before their transmittal to the Congress, but the President and the Commissioner of Education may make to the Congress such recommendations with respect to the contents of the reports as each may deem appropriate.

(d) Sums made available pursuant to section 151(i) of the Elementary and Secondary Education Act of 1965 shall be available to carry out the provisions of this section.

(e)(1) The Institute shall submit to the Congress, within one hundred and twenty days after the date of the enactment of this Act, a plan for its study to be conducted under this section. The Institute shall have such plan delivered to both Houses on the same day and to each House while it is in session. The Institute shall not commence such study until the first day after the close of the first period of thirty calendar days of continuous session of Congress after the date of the delivery of such plan to the Congress.

(2) For purposes of paragraph (1)—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period.

* * * * *

"ALLOCATION OF FUNDS WITHIN THE SCHOOL DISTRICT OF A LOCAL EDUCATIONAL AGENCY

"SEC. 150. (a) For any fiscal year not more than 20 local educational agencies selected for the purpose of section 821(a)(5) of the Education Amendments of 1974 may elect, with the approval of the districtwide parent advisory council which is required to be established under section 141(a)(14) of this title, to allocate funds received from payments under this title on the basis of a method or combination of methods other than the method provided under section 141(a)(1)(A). Any method selected pursuant to this section shall be so designed and administered as to be free from racial or cultural discrimination.

"(b) Any local educational agency to which this section applies shall submit such reports to the Director of the National Institute of Education at such time and in such manner as the Director may reasonably require to carry out his responsibilities under section 821(a)(5) of the Education Amendments of 1974.

APPENDIX B. RECOMMENDATIONS OF THE LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The following recommendations for improving the clarity of the Federal legal framework for Title I have been made by the Lawyers' Committee for Civil Rights Under Law, on the basis of the Survey of Legal Standards:

(1) OE should include, under each substantive requirement set forth in regulations published in the Federal Register, illustrative examples of its application to commonly occurring situations. This technique is commonly used by other agencies for clarifying complex requirements.[1]

(2) A separate section entitled "interpretations" should be included in the regulations.[2] This section should be organized by subject area, rather than by requirement. Suggested headings include: teacher aides, support services, pullout programs, in-class programs, desegregation, individualized instruction, inservice training, programs in open-space schools, etc. The resolution of the problems arising in these areas

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[1] See, for example, regulations published by the Internal Revenue Service in Title 26 of The Code of Federal Regulations.

[2] In accordance with the Education Amendments of 1976, Section 431 of the General Education Provisions Act now requires, among other things, that all interpretations be published in the Federal Register. In addition, Section 431 of the GEPA Statute requires that OE treat interpretations in the same manner as it treats substantive regulations with respect to publication in the Federal Register of a notice of proposed rulemaking, comment period, republication, and submission to Congress. The Lawyers' Committee recommends that Section 431 of GEPA be amended to require that OE interpretations simply be published in the Federal Register. OE should not be required to first publish their interpretations in proposed form subject to comments, republication, and submission to Congress since interpretation, unlike substantive rules, do not have the "full force and effect of law." Recall that a substantive rule implements the statute, whereas interpretations simply advise the public of the agency's construction of the statutes and rules it administers. Moreover, application of burdensome procedures to interpretations discourages rather than encourages interpretation by OE when issues need clarification. The Lawyers' Committee recommendation that OE be required simply to publish its interpretations in the Federal Register and not follow the procedure applicable to other substantive rules is not exceptional in any sense of the word. OE interpretations would then be subject to the same procedures most other Federal agencies now follow under Sections 552 and 553 of the Administrative Procedures Act (5 U.S.C. 552, 553).

often involves interpretation of a number of regulations. This section should also include legal models illustrating the wide range of alternative program designs that are possible.

(3) Congress should require that OE prepare a policy manual for use by OE staff, HEW Audit Agency staff, SEAs, LEAs, and parents.[3] The manual[4] should include, at a minimum, quotations of relevant sections of the Title I and GEPA statutes; quotations of relevant regulations appearing in the Code of Federal Regulations; explanations of the purpose of each requirement, with reference to the legislative history, where relevant; summaries of OE responses to SEA requests for interpretations, including examples of actual applications of the standards and operative definitions set forth in the regulations; summaries of final decisions rendered by the HEW Audit Hearing Board; final determinations made by OE concerning audits closed without reaching the Hearing Board; and summaries of relevant court decrees.

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[3] For example, the Department of Housing and Urban Development has developed a manual explaining its Section 8 Housing Assistance program. Similarly, the Department of Labor developed a manual for administering the Welfare and Pension Plans Disclosure Act. (This Act has been replaced by the Pension Reform Act of 1974.)

[4] It is the Lawyers' Committee's opinion that a mandate for OE to prepare a manual would not be inconsistent with Section 431 of GEPA, relating to publication in the Federal Register so long as the following components of the proposed manual first appear in the Federal Register pursuant to the procedures of Section 431: (1) quotations of relevant regulations, (2) summaries of OE interpretations, and (3) examples of actual applications of the requirements in the regulations. The remaining components of the proposed manual, since they are not "rules, regulations, guidelines, interpretations, orders, or requirements of general applicability," need not be published in the Federal Register. Of course, Congress could also exempt specific components of a manual from the requirements of Section 431. NIE does, however, recommend that, consistent with the Freedom of Information Act, OE publish a notice in the Federal Register that such a manual exists (see 5 U.S.C. 552).

The manual should describe the kinds of records LEAs must maintain to leave a sufficient "audit trail" for the HEW Audit Agency. This section should be prepared jointly by OE and the Audit Agency.

A manual explaining the full range of permissible program design options would help to eliminate the constraints on local discretion which result from uncertainty about Title I requirements.

To ensure the wide distribution of the manual, OE should disseminate it in the same way it does regulations: send mass mailings to all States and local Title I districts, convene national and regional training workshops, and participate in state and local training sessions.

Substantially increased clarity in the Federal legal framework and more systematic dissemination of needed information to States and local districts would result from enactment of these recommendations. Another effect would be greater LEA flexibility in designing sound and innovative Title I programs, as well as a more uniform administration of the basic Title I requirements.

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APPENDIX 4

Superintendent of Public Instruction
DR. FRANK B. BROUILLET · OLD CAPITOL BLDG., OLYMPIA, WASH. 98504

October 28, 1977

Ms. Nancy Kober
House Subcommittee on Elementary
and Secondary Education and
Vocational Education
B-346C Rayburn House Office Building
Washington, D.C. 20515

Dear Ms. Kober:

I am sorry we were unable to get anyone out of the State of Washington to attend your hearing held this morning. We would like to submit the enclosed remarks for inclusion in your report if that is possible.

In any event, I hope that it will be possible for these thoughts to be taken into consideration as you discuss the issue of Title I funding and compensatory education. If we may be of assistance with any further information, please do not hesitate to contact Bill Daley, Administrative Assistant for Federal Liaison, 225 Constitution Avenue, NE, Suite 1, Washington, D.C., phone: (202) 547-5101.

Sincerely,

Frank B. Brouillet
Frank B. Brouillet
State Superintendent
of Public Instruction

FBB:jj

Enclosures

SPI Superintendent of Public Instruction
DR. FRANK B. BROUILLET · OLD CAPITOL BLDG., OLYMPIA, WASH. 98504

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE
ON ELEMENTARY AND SECONDARY EDUCATION AND
VOCATIONAL EDUCATION
OCTOBER 28, 1977

William Daley
Federal Liaison Officer
Washington State Office of
Superintendent of Public Instruction

Chairman Perkins and Members of the Subcommittee:

I appreciate the opportunity to appear before you to provide testimony regarding the Compensatory Education Program in Washington State and its relationship to Title I.

The Compensatory Education Program in Washington State is entitled "Urban, Rural, Racial and Disadvantaged Education Program" and is commonly referred to as URRD. It was originated in the summer of 1969 as a response to the racial unrest existant in the urban areas of the State. In 1971, Rural was added to the title in order that small rural school districts could become eligible applicants. Since that time, it has been funded by the State Legislature at a biennial average of approximately $9 million.

Unlike compensatory programs in other states, URRD is competitive in nature. That is to say, school districts compete with one another for the available money, rather than receiving a specific amount based upon a distribution formula.

Programs are funded in one of five categories. Those categories are: (1) "Re-entry Motivation for Dropouts," (2) Pre-school Education, (3) Programs aimed at Improving Academic Achievement, (4) Community Involvement Programs, and (5) Bi-lingual, Bi-cultural Education Programs. All activity is directed toward the child who is not succeeding in school. Forty-two of the three hundred school districts in Washington State participate in the URRD Program.

This, then gives you a brief overview of the Compensatory Education Program operating in Washington State. Additional information can be provided if the Subcommittee desires it.

Since the Education Amendments of 1974, comparability requirements have not been a significant problem in Washington State with regard to State compensatory funds as those funds can, as a result of these amendments, be excluded from comparability reporting.

The supplanting question, however, does present significant problems to a number of local school district. Federal requirements related to supplanting insist that services be equitably provided to all children, with state and local funds, without regard to the availability of Title I funds (116a.22.(b)(10)). This precludes the use of URRD money solely in areas which are ineligible for Title I even though the ineligible area may have the greatest unmet educational needs. To do so would violate the supplanting requirement. Flexibility, then, at the local level is severly restricted with regard to the allocation of limited resources in ways judged to be most appropriate to meet local needs.

If the intent of Congress is to continue Title I focus on educationally disadvantaged students residing in low income areas, then the current requirements are necessary to see that the children which Congress has chosen to focus the funds on are not discriminated against in the distribution of state compensatory education funds. However if Congress sees fit to shift the focus of Title I from educationally disadvantaged children, then many of the current requirements become meaningless and require elimination or major modification.

There has been much discussion of whether or not the Title I statute and related rules and regulations interfere with effective implementation of state compensatory education programs. The experience of the State of Washington has been that Title I requirements have in a number of cases kept school districts from implementing the state compensatory education program in the way they felt best meets the educational needs of students. For example, LEAs often see unmet educational needs in areas ineligible for Title I funds. Since Title I funds are addressing the needs in the Title I areas the ineligible areas are prime candidates for state compensatory education funds. Title I rules and regulations "interfere" to the extent that the LEA can not utilize the state compensatory education funds solely in the areas that are not eligible for assistance under Title I. Title I requires that educationally disadvantaged children residing in low income areas must also receive their fair share of state compensatory funds.

Title I and state compensatory education programs can work together effectively. The National Institute of Education study on the relationship between Title I and state compensatory education programs found that Title I does not interfere with state compensatory education programs except where Title I itself is difficult to implement. The issues raised in that report are the same issues which have raised here today; the problem with the use of state compensatory education funds solely in the areas not eligible for assistance under Title I. The answer to whether modification of Title I in this area is necessary rests with whether Congress chooses to change the focus of Title I. If it remains with the current focus, the existing requirements are necessary. If the focus is changed, the requirement must be modified.

Any serious discussion at the federal level of linking Title I disadvantaged monies to the development of state compensatory education programs I presume would be opposed by officials who believe that their states could not afford such an expensive undertaking. Nevertheless, were you to proceed anyway toward this goal, I would hope that you give serious consideration to substantial consolidation and simplifications throughout the Elementary Secondary Education Act. Coordinating a state compensatory education program with the broad variety of current federal programs merely exacerbates the confusion, paperwork, and regulatory friction that already exists between state and federal programs. Implementation of the handicapped act serves as only a most recent illustration of this problem.

Finally, the discussions of requiring a more substantial state effort in this area, such as state matching, should be undertaken only after recognition of the fact that the federal government had not supplied the amounts of money that it has committed itself to in the Title I authorizing legislation. All of the eligible Title I students never have been served. Currently, estimates of service level in Title I range in the area of the mid-50th percentile. The appropriation for Title I is billions of dollars below the authorizing legislation. If the federal government does not have the resources to fulfill what one may presume to be its own expectations in this arena, how may be expect states to find the resources to assume these additional obligations? Many of the problems you have heard about in testimony as you have reviewed the Elementary and Secondary Education Act are the products of this low level of funding. Controversies about comparability, dollars following students, targeting on educational or economic disadvantaged, would in a large measure be resolved if the program were fully funded. It would, perhaps, be a benefit to all of us and to disadvantaged students in particular if the federal government were to hasten to appropriate the money necessary to fund fully Title I before embarking on additional experiments.

DYSFUNCTIONAL ELEMENTS IN THE ESEA TITLE I STRUCTURE

presented by

Charles L. Blaschke
President
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1030 Fifteenth Street, NW
Washington, DC 20005

This paper includes a review of the overall purpose of the study conducted for the Institute for Educational Leadership, 1976. The general approach and the limitations of the study are noted. Then we summarize some of the major findings of the study with policy recommendations.

Purpose of the Study

As a result of the Education Amendments of 1974, USOE and NIE have funded approximately $50 million of studies which focus upon various aspects of compensatory education. Most of these studies are Congressionally-mandated and are different from those conducted in the past in terms of specificity, content, and tone. For example, in the $15 million of "comp-ed studies" assigned to NIE, Congress specifies the areas of investigation to be addressed and mandates that the findings be submitted directly to Congress. The majority of these studies and evaluations are addressing questions regarding the education impact of ESEA Title I (e.g., "Sustaining Effects Study" being conducted by Systems Development Corporation). A number of projects sponsored by NIE are examining the feasibility of many of the alternatives which were debated during the Congressional hearings prior to the passage of the Education Amendments of 1974 (i.e., the Quie Amendment). Only a very limited number of on-going studies, however, are assessing the impact on administrative behavior at the various governmental levels responsible for the implementation of ESEA Title I. This particurlar study attempts to do so and thereby provides some basis for revision of ESEA Title I in 1977-78, should that be considered desirable.

The purpose of this limited study was to identify the existence of dysfunctional elements in the inter-governmental structure responsible for the implementation of ESEA Title I programs. The extent of these dysfunctional elements and disincentives inherent in the structure, such as USOE Rules and Regulations and administrative practices, initially was limited to a determination of the administrative burdens created at the various levels. However, in the process of conducting this study it became evident that it would be helpful to attempt to determine the impact on program effectiveness at the local level as well, for a number of reasons.

First, while it is useful to identify unfair administrative burdens created by certain provisions of the Rules and Regulations, Federal officials could legitimately ask, "So what. We know, for example, that the 1% allocation to SEAs for administrative purposes is inequitable for SEAs with a large number of Title I applicants relative to those with a lesser number of applicants but a similar total allocation; but does this inequity have a direct effect on program effectiveness at the district level?" This study explores these types of questions.

Second, within the last year a relatively large number of studies of Title I effectiveness have identified a number of implementation variables that are highly associated with successful comp-ed programs. These studies include those conducted by the Rand Corporation, Education TURNKEY Systems, and Education Testing Service as well as a number of others. As a result, one can describe these characteristics; and, then, based on observation and discussion with SEA and LEA officials, one can develop rather strong hypotheses regarding the existence or emergence of these characteristics in light of dysfunctional elements and subsequent administrative behavior. This relationship is also addressed in this study.

Approach Taken

As the purpose of the study was widened in terms of scope and focus, the approach also was modified. Moreover, as the tasks were completed, the findings at specific stages served to crystalize the study design and affect the nature of subsequent taks.

First, the rather meager stockpile of literature focusing upon the administration of ESEA Title I was reviewed. Summarized in the Report, many of these studies have not been published officially or are presently on-going; due to the sensitive nature of the studies,some are not available to researchers generally. Some of these studies focused or are focusing upon the dysfunctional elements in the Rules and Regulations or administrative behavior, particularly at the USOE and SEA levels. Few, if any, studies provide insights into the administrative impact on the LEA level or address the question of intra-governmental practices at the state level including SEA-state legislature relationships. Obtaining information in these areas was a particularly sensitive task.

Second, based upon a review of the literature and discussions with knowledgeable individuals, a number of working hypotheses and study questions were formulated within a general model of administrative behavior in the intra-governmental structure responsible for Title I. These models of administrative behavior are discussed in the full report.

Third, the data collection phase was both iterative and concurrent (e.g., based on a review of the literature and the deficiencies noted above, additional data collection tasks were added). Following survey questionnaires, personal contacts with some of the above individuals and additional officials were made through either telephone follow-up or through individual or collective meetings. For example, the types of collective meetings included: a) executive committee meeting of the NAAF/SEP Regional Vice Presidents in Washington, D.C.; b) group meetings with compensatory education program directors from Michigan and California during Washington visits; c) small group meetings with key state legislators during secheduled conferences in Washington of the National Council of State Legislatures (NCSL); and d) SEA Title I office staff meetings.

Due to the dearth of information regarding impact as perceived by state legislators, a questionnaire sent to over 200 individual legislators by the NCSL was reviewed by the author,who added several items relevant to this study. In addition, key and knowledgeable state legislators serving on the NCSL Education Committee were interviewed personally during scheduled Washington meetings. Where open-ended responses to the questionnaire sent to state legislators sounded "interesting," follow-up contacts were made by telephone in order that a complete understanding of the response concern or issue could be determined and documented.

Even though the primary focus of data collection, particularly interviews, was at the state and local level as described above, several key officials within the executive branch at USOE and NIE as well as Congress were interviewed. In every instance individuals with different vantage points were interviewed in an attempt to have issues aired by persons with various perspectives. Similarly, in discussions with Congressional committee staff an attempt was made to elicit responses from members of both parties.

And last, the author had an opportunity to observe and analyze the planning and operation of ESEA Title I programs in over 100 districts in 8 states over the last 2 years. During on-site visits, discussions with key LEA Title I staff provided many insights into the problems association with the administration of ESEA Title I.

In all instances the respondents' viewpoints either through questionnaires or through personal interviews were kept confidential. Only in those instances where a respondent agreed to be quoted by name were such quotations attributed directly to the source.

The analysis was conducted at the end of Summer of 1976.

Limitations

In addition to the major constraint (a budget allocation of $5,000 and less than 50 person-days' effort), there are several other limitations of which the reader should be aware in interpreting these findings and their generalizability. It should be noted that the purpose of this study was not to be exhaustive and comprehensive but rather exploratory in nature, relying heavily upon "relatively soft" data.

First, the sample size of respondents was limited to less than ten individuals since OMB clearance would have been required if additional individuals within categories were surveyed and were sent the same instruments. Such a small sample precluded any statistical analysis.

Second, in certain instances the sample from which responses were solicited was drawn for other purposes. For example, certain items were included in the instrument developed and sent by the NCSL whose interest was gaining responses to general compensatory education questions. Hence, many of the respondents were not that familiar with the nature of the specific questions included for this study. However, it was felt that this method of collecting data from a large number of state legislators would be much more fruitful than collecting only relevant information from a much smaller group. The sampling information did allow for some stratification in the analysis.

And last, the study was conducted during a period of transition in the administration of ESEA Title I due to the on-going implementation of portions of the Education Amendments of 1974 which affect Title I. While the ESEA Title I Rules and Regulations are still in draft form, respondents in many instances provided information based upon their recollection of the administration of ESEA Title I prior to the Amendments while others couched their comments in terms of their interpretation of existing draft Rules and Regulations. It should be noted that these interpretations vary from state to state and from district to district.

Summary: Findings & Recommendations

The purpose of this study was to identify and analyze the impact of dysfunctional elements in the Title I intergovernmental structure upon administrative behavior and program effectiveness. Review of the limited research and literature provided a conceptual framework and working models used in designing the data collection process, which admittedly was relatively unstructured and less than scientifically rigorous. Discussions with knowledgeable officials, including state legislators, provided useful insights into their perceptions of the problems, issues and potential solutions re the governance of Title I. Observations of Title I programs and further discussions with LEA staff, in many cases, confirmed the existence of these widely-held perceptions. Given the limitations of this small scale study, the following findings are summarized with suggestions and recommendations for improvement.

A. A "compliance orientation" pervades the LEA/SEA decision-making process and affects administrative behavior to such an extent that unintended effects arise. Since less than 1 percent of funds which are allegedly misused are returned, it is indeed ironical that the credibility (and often fear) of the auditor, willfully wooed at the federal level, is a concern which so many LEAs and SEAs keep uppermost in their minds as they design and implement Title I programs at the local level. Furthermore, due to the informal, negotiated process by which "remedy decrees" have traditionally been formulated and the lack of specificity in USOE guidelines regarding what is and what is not allowable, the SEAs and LEAs perceptions of what is illegal are often more exaggerated than real--an observation shared by others in the field of research. In addition, the differences in interpretations and in perceptions of HEW auditors and USOE program staff tend to further perpetuate this emphasis on audit versus program reviews, often at the expense of program stability and effectiveness. As a result, SEAs and LEAs often have to decide which "master to serve". In the face of this uncertainty, risk aversion is the rule, rather than the exception. Unfortunately,potential loss of Federal support often receives more attention than the needs of Title I children.

A number of suggestions, some of which have been recommended in the past, would go a long way toward alleviating many of the problems, perceived and real, noted above.

(1) The Title I Rules and Regulations need to be clarified and simplified,not only in areas which are prescriptive (i.e., what to do) but also, most critically, in areas which are proscriptive (i.e., what is not allowable).

(2) A set of audit procedures and guidelines to be followed by both HEW auditors and USOE program staff should be developed jointly and used uniformly by both groups on SEA and LEA site visits. As the recent USOE report cited earlier recommended: "Title I should seek an early opportunity to develop for, and in some measure with, the Audit Agency the operational definitions of (a) comparability; (b) supplanting; (c) general aid; (d) target areas, and (e) ineligible children which would assist substantially in avoiding audit exceptions at the SEA and LEA levels." In addition, these guidelines and recent "findings" during administrative hearings related to audit exceptions should be disseminated widely to SEAs and LEAs.

(3) The existing informal "negotiated process" for settling audit exceptions should be formalized, using to the greatest extent possible the administrative machinery established in PL 93-380 Title V. Less than ten such hearings have been conducted in the last year---and in few instances was legal councel present for either party. Precedents compiled from these hearings should be made available to the public and disseminated to SEAs,particularly where they are generally applicable. We appreciate the argument that the negotiated process "allows reasonable and honorable men" - the USOE Commissioner and SEA Chief - the flexibility to treat SEAs differentally in light of their general program performance when audit exceptions are alleged. Yet, when a "nation of law" has to revert to such an alternative one has to seriously question the nature of the law itself.

B. Existing legislation and Rules and Regulations have resulted in a number of inequities for LEAs and SEAs in unique situations. For example, the existing formula for allocating funds to SEAs for administrative purposes is inequitable and creates undue burdens on SEAs with relatively large numbers of LEA applicants proportional to the total state allocation. In these situations, the SEAs' capacities to meet legislated requirements of SEAs is strained, resulting often in inadequate SEA services in several areas. Also, in situations where state-appropriated compensatory education programs exist or where LEAs provide compensatory education programs through local budgets, Federal provisions related to supplanting, comparability, and target and student selection, foster unequal treatment, if these provisions are adhered to strictly. Last, for LEAs with district-wide organizational structures which differ significantly from traditional practices, additional inequities exist. For example, where the enrollments of elementary schools (both Title I and non-Title I) vary considerably, adherence to comparability ratios seriously affects the programs which are designed to serve target students. It is encouraging to note that the present draft of the new ESEA Title I regulations is a step forward in this area in providing alternative means for computing comparability ratios in certain instances.

The following recommendations, if implemented, could remedy many of these inequities.

(1) The formula for allocating funds for SEA administrative purposes should be based upon the number of LEA applicants in the state, taking into account the size of the LEA-applicant/program based upon an empirically-based determination of SEA staff time necessary to meet minimal requirements per category. While some feel this might "telegraph" incentives thwarting consolidation, the advantages appear to outweigh the disadvantages.

(2) The Rules and Regulations should specify general situations in which a conditional waiver of specific provisions, such as comparability, supplanting, etc., could be made without having to seek aporoval of the USOE Commissioner (e.g., where a legislature has mandated individualized programs for all children, a waiver would be conditional upon the LEA's demonstration that Title I children attained a percentage of their objectives). As Congressional Budget Office Director, Dr. Alice Rivlin recommended as a model several years ago: "[The Federal government should]...reward those who produce more efficiently. Free to vary the way they spend the money as long as they accomplish specified results, recipients of federal grants could be rewarded for producing beyond expectations. This procedure would liberate them from the straitjacket of input controls and promote vigorous and imaginative attempts to improve results."

C. Many of the complaints of SEAs and LEAs - that existing Title I Rules and Regulations cause undue burdens of an administrative nature - are justified. Even with "forward funding," "carryover," and/or "advance funding," late funding and funding uncertainty remain an administrative problem of major proportions imposed on SEAs and LEAs. The impact is felt in areas ranging from the hiring of personnel to the need for continual modification and updating of Title I programs. Another area in which SEAs and LEAs feel an unjustified burden is Title I reporting. This concern has certainly heightened as a result of the 26 May 1976 proposed Rules and Regulations on Uniform Reporting for all USOE programs. Aside from legal arguments (e.g., delegation of authority to USOE contractors), the excessive administrative requirements at both LEA and SEA levels require serious reconsideration by USOE. When and if published, the Rules and Regulations should take into account SEA-LEA comments on the 26 May 1976 proposed Rules. A finding from discussions with state legislators seems to indicate that some state houses are beginning to demand from SEAs evaluations and reports on Title I. As this trend increases Congress should reconsider where the primary stewardship for monitoring evaluation activities should lie.

(1) It is strongly suggested that in order to reduce late funding and funding uncertaintly, Congress should seriously consider a multi-year appropriation for ESEA Title I.

(2) While USOE requirements for uniform reporting and evaluation in ESEA Title I will probably evolve over time to the bare minimum needed to satisfy Congressional intent, the USOE and Congress should seriously consider the participation of state legislatures in the governance process for ESEA Title I reporting and evaluation conducted by SEAs. At a minimum, state legislative review and perhaps approval of such plans should be entertained. State legislative involvement in the history of ESEA Title I is not new since the California Legislature's control of Title I in the late 60's.

D. The Title I Rules and Regulations and administrative practices of SEAs and USOE and the perceptions and interpretations by LEAs tend to preclude, in many cases, the emergence or existence of characteristics and implementation variables which have been identified with successful Title I programs. As noted above, while LEAs perceptions of legal bounds may be more restrictive than allowable, specific provisions often gravitate against the implementation of effective ESEA Title I programs.

(1) Numerous studies indicate the importance of participatory planning and teacher training as part of the implementation of a new program. While planning and compensatory education-related teacher training are now allowable

costs under the March, 1975 draft Regulations, funding must come from the existing overall allocation to the LEA, which in real dollars has been reduced considerably in many instances. In addition, late funding and funding uncertainty often precludes involvement of staff in planning and the training of teachers in specific instructional systems.

(2) Coordination between the Title I staff and the principal, as well as coordination between the Title I teacher and the regular teacher, is a critical variable associated with successful programs and has been recognized in the Rules and Regulations as a key consideration in designing Title I programs. However, due to supplanting provisions and, to some extent, comparability provisions, and the perceptions and interpretations of these provisions by SEAs and LEAs, Title I programs, for the most part, are conducted separately either in a lab situation or even in a facility separate from regular programs of math and reading. Coordination under these conditions is extremely difficult, and the lack of it often results in dysfunctional instructional programs with internal conflicts in terms of classroom organization, degree of individualization, and methodology.

(3) Delegation of decision-making to the lowest operating levels and building autonomy has been associated with high achievement in numerous studies. However, due to comparability concerns, many decisions regarding budget, program design features, and types of resources to be allocated in the Title I schools are often made in the central administration LEA office, leaving little decision-making flexibility to the principal and in turn to the Title I/regular teachers.

(4) While a number of NIE and USOE studies are addressing the relationship between individualized instruction and student performance, a number of recent studies indicate a strong correlation between the two in Title I and other compensatory education programs. The evidence is not as supportive in regular math programs (see project LONGSTEP) as it is in reading. However, a number of studies of exemplary programs indicate that the use of performance objectives, a wide variety of materials, diagnostic and prescriptive techniques, and other "individualized" dimensions are associated with positive student performance. Indeed, the Rules and Regulations encourage individual plans of instruction for each child, reflecting the intent if not the letter of the law. However, in a number of LEAs, especially those with local mandates or SEA mandate for individualization, not only are the Title I programs of

a pull-out configuration, but also the instructional methodology differs significantly, usually being less individualized than the regular program. Also, the fact that in many instances specific materials can be used only for Title I students reduces the availability of materials, even though a variety exists within a school. In other instances, the Title I program is highly individualized while the regular program is very traditional, a situation which is found in districts where a move back to "the fundamentals" prevails.

5. A number of studies have found positive correlations between parent "involvement" and cognitive development at the pre-school level, and others "strongly suggest" a similar relationship at the early elementary levels. Yet while Congressional intent clearly supports parent involvement through PACs at the building and district level as a desirable end in itself, SEA/LEA interpretations of the Regulations and guidelines vary considerably. Role definitions are sorely lacking; guidance to SEAs is vitually non-existant; and according to some LEA officials, the "law" is more specific than the Regulations. At the same time, according to the recent Gallop Poll of Education, there appears to be a growing interest among parents to be involved in school matters.

Pending the results of several on-going studies, specific recommendations, here, are limited to further clarification and more precise definitions in the Regulations re Title I. Yet, the increasing interest on the part of Congress and parents in greater "parental involvement" surfaces immediate implications, particularly for SEAs and LEAs. To take advantage of the opportunities offered by these trends, LEAs should initiate "parent education" programs. Principals should be trained to bridge the gap between the professional teacher and the lay parent so that the child benefits. Parents should be given the opportunity to influence the decision-making process more directly.

That such initiatives can be legislated at the Federal level is somewhat akin to legislating morality, a question of values. Perhaps such policies are best formulated at the state level.

To the extent that the Rules and Regulations and their interpretation by SEAs preclude and/or reduce the possible emergence of characteristics associated with successful programs, a number of changes would appear to be in order. Specific suggestions for improvement of Title I programs at the LEA level are:

first, reduce the number of comparability ratios to per pupil allocations of resources, thereby increasing decision-making flexibility at the program level and resulting in program designs based upon the building-level staffs' perceptions of what is needed to improve performance of Title I students; second, delegate authority to waive supplanting provisions to the SEA level. The SEA also, should review requests for such waivers by LEAs in light of the LEA's willingness to insure that student objectives are obtained. Subsequent waivers by SEAs would be based upon the degree to which the LEA accomplishes its stated Title I student objectives. Congressional appropriations should also be increased for planning and teacher training for subsequent years' programs out of the previous year's budget.

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HERBERT D. LIEBMAN
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October 6, 1977

The Honorable Carl Perkins, Representative
2365 Rayburn House Office Building
Washington, D. C. 20515

Dear Sir:

It has been brought to my attention that a study is being undertaken to determine methods for reducing paperwork related to the operation of Federal elementary and secondary education programs. The purpose of this letter is to offer a response from the perspective of a local school district.

I fully believe that the majority of the forms that come to the local district are designed for a distinct purpose, and are not intended to cause busy work. I further believe that most state agencies, such as the Title I Office in the State of Kentucky, are both efficient and fair in their expectations. However, when one considers the fact that for each project the district must assess and document needs, must select students for participation and document this procedure, must prepare a lengthy project application with all the trimmings, and must establish an evaluation design that is comprehensive, it becomes a rather lengthy and time-consuming effort.

Each of these steps is required for the operation of an ESEA Title I program, and they are required in totality year after year. (It is not our intent to single out Title I as the only program that requires excessive paperwork; it is only being used as an example of how this effort can best be approached.) Some of the forms that must be filed in order to prepare the Title I application include the following:

a.) Determination of eligibility - this involved 48 pages of documentation and approximately 11 hours of administrative time.

b.) Comparability reporting - requires two to three pages for the report and approximately four man-hours of administrative time to calculate.

c.) Indirect cost calculation - requires a seven page report which takes approximately four man-hours to prepare.

d.) Parent Advisory Councils - Information that must be duplicated and disseminated (a minimum 50 page document X 7 schools X 6 members = 2,100 pages plus) to advisory council members has become excessive. Secretarial time amounts to about 30 man-hours, plus additional administrative hours for election meetings that vary depending on the size of the district. Administrative time utilized for advisory councils last year amounted to 110 hours at a minimum.

e.) Preparation of the application - the application itself is 46 pages long (excluding the budget) and must be prepared in triplicate. This requires a minimum of 80 man-hours plus an additional 16 to 20 hours for typing and other clerical work.

f.) Program evaluation - reporting forms require a minimum of 19 pages, with approximately 150 man-hours time for data collection.

There are other reports and planning instruments that are necessary for operation of the Title I project, but for purposes of brevity, no further description will be made at this point.

Reduction of the paperwork without reducing effectiveness can be accomplished with proper planning. Specifically, the most appropriate methods that we, as educators in the local district see, are as follows:

a.) Continuation projects This would allow the local district to plan a three to five year program, during which time needs assessment would occur once (initially), comparability and eligibility would be required only at the beginning of the multi-year period, and the annual application would only require a statement of changes from the initial application and a new budget for each year.

b.) Advisory Council Information - Materials for advisory council members could be available for their examination in a central location, and eliminate the need for each member to have a personal copy of each aspect of the program.

c.) State agency requirements - State Departments of Education could be advised to require no more information on their forms than is necessary for their reports to the Federal agency. Necessary controls could be maintained through direct monitoring activities.

d.) Comparable requirements - when a one page form is sent out, it should require a one page answer. Little will be accomplished if brevity only causes confusion.

Examples of man-hours required for paper work provided in this letter only touch the surface of what is actually required. We find ourselves in the position of being inaccessible to teachers and students when we are needed because we are tied down to paperwork. Your awareness of this problem is appreciated, and we are pleased to have the opportunity to respond.

Please be advised that we will be most happy to continue studying this problem and to work with you toward a satisfactory solution.

Sincerely,

Dr. Edward W. Wright, Superintendent
Franklin County Schools

EWW/DM/ceb

APPENDIX 5

November 15, 1977

Dr. Paul Hill
Director
Compensatory Education Study
National Institute of Education
1200 19th Street, N.W.
Washington, D. C. 20208

Dear Dr. Hill:

During the course of the Subcommittee's hearing on October 25th on administrative issues related to Title I, ESEA, you were informed that some of the members wished to submit additional questions to be answered for the record. Due to the constraints of time, we were not able to pursue all of these questions at the hearing.

Therefore, we would appreciate your responding to these questions as soon as possible, and no later than November 30th, so that we can include them in our printed hearing record. The questions are attached to the letter.

Thank you very much.

Sincerely,

Carl D. Perkins
Chairman

CDP:jk

DR. HILL

1. What is the greatest problem in administering Title I at the Federal level? At the State level? At the local level?

2. In your view do the states need a greater set-aside for state administration?

3. What does OE tell states with respect to the ability of the state to issue regulations which go beyond OE's?

4. You report that the statute, regulations and letters of advice are consistent. Yet by your own evidence, and an independent HEW study, the interpretation of this framework through audits and program reviews seems to be far less consistent. Would you care to comment on this?

5. Your study focuses specifically on DED and CEP as the major actors in HEW's audit difficulties. Why was so little attention paid to the important roles, played by such agencies as the office of the General Counsel, the Finance Division the HEW Audit Agency and the Office of the Commissioner. What positions have these agencies taken?

6. Your studies report that the statute, regulations and letters of advice are consistent. The evidence of the audits, and your own testimony, suggest that this framework may nevertheless not be consistent with the way the program is administered in practice, through audits and program reviews. Would you care to comment on this?

7. Differences of opinion always exist within administering agencies, and one way of resolving them is to prepare formal issue and options papers. Is it possible that your study lacked perspective by focusing on these aspects of the problem while ignoring others?

8. Would enforcement be easier and more realistic if the law were amended to permit graduated penalties rather than full cut-off?

9. What changes might be made in the law to make state and Federal programs of comp ed more compatible? Do you support the Lawyers Committee recommendations?

10. What would be a fair handling of the set-aside for SEA administration? What specific tasks need to have more or less attention at the state level?

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL INSTITUTE OF EDUCATION
WASHINGTON, D.C. [illegible]

NOV 30 1977

Honorable Carl D. Perkins
Chairman
Subcommittee on Elementary, Secondary
  and Vocational Education
B-346C Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

In response to your letter of November 15, 1977, I have prepared answers to ten questions about the administration of Title I. The enclosed paper lists your ten questions and my answers to each.

I hope the paper will be helpful in your deliberations on Title I.

Sincerely,

Paul Hill

Paul T. Hill, Director
Compensatory Education Study

Enclosure

Responses by Dr. Paul T. Hill

To Questions from Representative Carl Perkins

Q. 1. What is the greatest problem in administering Title I at the Federal level? At the State level? At the local level?

A. At the Federal level the greatest challenge is managing a program that delivers services in 14,000 school districts, with a relatively small investment in federal administration. OE's basic approach--making occasional site visits to provide advice and publishing the results for the consumption of others not visited--is sound, but the government is often handicapped by shortages of staff and travel funds and by internal conflicts over the proper federal role, which make even this modest strategy less effective than it might be.

At the State level the greatest problem is organizing a monitoring and technical assistance effort to manage a large number of districts. This is a substantial problem in every state, and is difficult in states that have large numbers of LEAs. The best solution to the problem is to provide a fully-staffed and active Title I office in the State Education Agency. However, the lack of sufficient staff is exacerbated in some states by SEA policy which favors hiring contractors and consultants over regular staff, and high overhead rates which reduce the amount of set-aside funding available for hiring staff.

At the local level the greatest problem is mastering complex rules, not only for Title I and other federal programs, but also for a growing number of state programs. In general, these various requirements can be fit together to permit a reasonably simple set of programs. But if they are dealt with one by one, the diverse requirements seem very burdensome. Larger districts are often able to invest the staff time available to plan and organize an efficient response to the requirements; once this is done, the yearly applications and reports are not overly burdensome. But for small districts, or those that do not invest time in mastering the requirements, the planning and recordkeeping process can be chaotic. A possible role for SEAs is to help such districts understand how the requirements of different programs fit together.

Q. 2. In your view do the states need a greater set-aside for state administration?

A. Many, perhaps most, states could be more vigorous in executing their Title I administrative responsibilities. A larger administrative set-aside could promote that. However, many states do not spend the money they now have for the most efficient management resources, i.e., staff, and others charge very high overhead rates that reduce the level of management activity. A slightly larger set-aside, especially for small states with large numbers of LEAs, could help. An increase should, however, be accompanied by clear requirements for vigorous programs of state monitoring and technical assistance for school districts.

Q. 3. What does OE tell states with respect to the ability of the state to issue regulations which go beyond OE's?

A. As our report has said, OE's message is unclear. OE generally assumes that states can promulgate any regulations they want so long as they do not contradict the Title I statute or formal regulations. However, the legal framework gives states this power explicitly in only one area, parent involvement, and many SEAs are reluctant to exercise a power unless it is explicitly contained in the federal regulations. Thus, if OE expects the states to issue their own regulations, the authority should be granted explicitly.

Q. 4. You report that the statute, regulations and letters of advice are consistent. Yet by your own evidence, and an independent HEW study, the interpretation of this framework through audits and program reviews seems to be far less consistent. Would you care to comment on this?

A. Our report distinguished between the written legal framework, consisting of the statute, the regulations, guidelines, and letters of advice, and the actions of federal officials in administering the program on a day-to-day basis. The legal framework is consistent, but the government's use of it is not. Some of the lack of consistency in day-to-day management is due to normal human misunderstandings and mistakes in judgment. But as Chapter 3 of our Administration Report has shown, some important inconsistencies arise from a real conflict within HEW about the proper role of the Federal Government in enforcing the requirements that Title I funds be used for supplementary services to educationally disadvantaged children.

Some offices, such as the Division of Education for the Disadvantaged (DED) and the HEW Audit Agency, wish to play an active role in monitoring and enforcing the legal framework. Other offices, most notably the Office of the Associate Commissioner for Compensatory Education Programs (CEP) favor a less active policy. The results of that disagreement are documented in Chapter 3 of our report on administration.

Q. 5. Your study focuses specifically on DED and CEP as the major actors in HEW's audit difficulties. Why was so little attention paid to the important roles played by such agencies as the Office of the General Counsel, the Finance Division, the HEW Audit Agency, and the Office of the Commissioner. What positions have these agencies taken?

A. Chapter 3 of our report on administration examines the federal administration of those Title I program requirements which guarantee that funds will be used to provide supplementary services to educationally disadvantaged children. Our research focuses on the offices which have the most direct responsibility for enforcing those guarantees, i.e., the Division of Educaiton for the Disadvantaged (DED) and the Office of the Associate Commissioner for Compensatory Education Programs (CEP).

In those cases where other offices become involved, they (e.g., the Commissioner of Education, the Office of General Counsel, and the HEW Audit Agency) consistently supported DED's approach to monitoring and enforcing the supplementation guarantees.

Q. 6. Your studies report that the statute, regulations and letters of advice are consistent. The evidence of the audits, and your own testimony, suggest that this framework may nevertheless not be consistent with the way the program is administered in practice, through audits and program reviews. Would you care to comment on this?

A. I believe this is covered by my answer to #4 above.

Q. 7. Differences of opinion always exist within administering agencies, and one way of resolving them is to prepare formal issue and options papers. It is possible that your study lacked perspective by focusing on these aspects of the problem while ignoring others?

A. Differences of opinion were deemed relevant to the degree they affected the administration of the program. Our report documented the consequences of a conflict over the proper federal role in enforcing Title I's supplementary services guarantees.

In analyzing that conflict, we relied on official action statements and on personal interviews. The action statements included program guidelines, advisory letters to states, program reviews, and action memoranda outlining reasons for rejecting audit findings. Our data are not drawn from hypothetical "issues and options" papers. Citations to "issue and options" papers were made in footnotes as additional supporting material and as additional reference material for the reader.

Q. 8. Would enforcement be easier and more realistic if the law were amended to permit graduated penalties rather than full cut-off?

A. I think the answer is surely yes, and I understand that the Administration may propose a set of graduated sanctions in its recommendations on Title I reauthorization.

Q. 9. What changes might be made in the law to make state and Federal programs of compensatory education more compatible? Do you support the Lawyer's Committee recommendations?

A. The Lawyer's Committee for Civil Rights under Law (LCCR) has suggested changing the Title I legal framework to provide flexibility for states which conduct compensatory education programs. It concerns the Supplanting and Equitably Provided provisions of Title I, which require that State Compensatory Education funds be distributed without regard to the availability of Title I funds. The LCCR has argued that these requirements can create a disincentive for state investment in compensatory education programs, because they can produce very high per pupil funding for Title I students and much lower levels of funding for educationally disadvantaged children who do not attend Title I target schools.

To remove the possible disincentive, the LCCR has identified some situations in which school districts could be exempted from the Supplanting and Equitably Provided provisions. When all Title I eligible children in a district are receiving compensatory services funded at the same level as would be achieved by the full funding of Title I, the district could be exempted from the Supplanting and Equitably Provided provisions. The exemption would remain in effect until all children served by the SCE program reached the level of support enjoyed by Title I students, at which time the exemption could be removed.

This recommendation is reasonable, and I expect that the Administration and concerned state officials will favor such a solution.

Q. 10. What would be a fair handling of the set-aside for SEA administration? What specific tasks need to have more or less attention at the state level?

A. I think this question is covered by my answer to #2 above.

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON ELEMENTARY, SECONDARY
AND VOCATIONAL EDUCATION
[illegible] RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

November 15, 1977

Dr. Thomas K. Minter
Deputy Commissioner
Bureau of Elementary and Secondary Education
U.S. Office of Education
Department of Health, Education, and Welfare
Washington, D.C.

Dear Dr. Minter:

During the course of the Subcommittee's hearing on October 25th on administrative issues related to Title I, ESEA, you were informed that some of the members wished to submit additional questions to be answered for the record. Due to the constraints of time, we were not able to pursue all of the questions at the hearing.

Therefore, we would appreciate your responding to these questions as soon as possible, and no later than November 30th, so that we can include them in our printed hearing record. The questions are attached to the letter.

Thank you very much.

Sincerely,

Carl D. Perkins
Chairman

CDP:Jp

DR. MINTER

1. When can we expect the publication of new policies, standards of procedures related to the supplanting problem and its consequences in the audits?

2. What has been done to remedy the findings of NIE regarding internal OE conflicts in the administration of Title I? What is the current policy?

3. Has the HEW Finance Agency ever used its power to offset these debts against state allocations? If not, why has this collection mechanism been neglected?

4. The HEW Finance Agency is finally responsible for collecting audit exceptions that have been upheld. On the whole, their record has been very poor. Has the Commissioner's office given its active support to their efforts to collect these debts? If not, why not?

5. Please elaborate on the "policy recommendation" made to the Secretary which you say would eliminate audit problems. Specifically, how would procedures or standards be changed?

6. According to your testimony, 14 LEAs that were not in compliance with comparability requirements failed to submit revised reports. Yet their applications were not disapproved. Who should have taken action on these 14 cases, and why was nothing done?

7. During earlier hearings, the subcommittee heard testimony to the effect that services to nonpublic school children were poor or nonexistent. What steps is USOE taking to improve this situation? Will these steps result in a broad improvement, or only in scattered local corrections?

8. What constitutes "acceptable corrective action" regarding audits, as stated in page 9 of your testimony?

9. Describe comparability reporting requirements and how they differ with respect to schools of different sizes and grade configurations?

10. Since the law tells OE to make allocations to LEAs does OE have any plans to actually comply with the law?

11. How does OE deal with sub-county allocation problems where LEAs cross county lines? Did OE ever resolve the sub-county allocation problems discovered in Pennsylvania in 1974-75? If so, how?

12. The 1975 Pollen Report stated that attempts to improve audit effectiveness "Are frustrated by the absence of clear lines of responsibility, clear policies and clear procedures". What has been done specifically to change this?

13. Lack of understanding, even open distrust, has long been alleged between Title I program officials and HEW auditors. What steps, if any have been taken to improve this situation and thus produce more reasonable and effective auditing?

14. What is the current staffing of the audit hearing board, and is this adequate to its needs?

15. What has OE's ruling been with respect to the presence of teachers on PACs?

16. Your testimony refers to difficulties in SEA administration during "the early years." What were these difficulties specifically? Is there any solid evidence to show that state level administration has been improved?

17. What do you believe is the greatest remaining need at the state administration level if they are to continue to improve?

18. Has USOE staff been increased systematically in order to give better and more consistent attention to existing problems, especially with auditing and the resolution of differences? Has this taken place only in BESE, or in such other places as the general conusel's office?

19. On page 3 of your testimony, you refer to dissemination activities for Title I Are any hard data available on the extent to which LEAs have adopted disseminated program models, or on the success of such transplants?

—— DR. MINTER

1. What is the greatest problem in administering Title I at the Federal level? At the State level? Local level?

2. In your view do the States need a greater set-aside for State administration?

3. What does the Office of Education tell States with respect to the ability of the State to issue regulations which go beyond the Office of Education's?

4. Has the completeness and accessibility of audit exception data, and its status in the resolution process, been improved significantly during the last two years? If so, what is the present system of handling this data?

5. What is the last step in the audit resolution process? How many steps are there in that total? What are they?

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

21 DEC 1977

Honorable Carl D. Perkins
House of Representatives
Washington, D.C.

Dear Mr. Perkins:

This is in response to your letter of November 15 which transmitted additional questions on administrative issues related to Title I as a follow-up to the hearing held on October 25 by the Subcommittee on Elementary, Secondary and Vocational Education.

The questions and answers, with one exception, are enclosed. A table is being prepared and will be forwarded as soon as possible in answer to question 4, "Has the completeness and accessibility of audit exception data, and its status in the resolution process, been improved significantly during the last two years? If so, what is the present system of handling this data?" We appreciate the opportunity to submit this material for incorporation into the hearing record.

Thank you for your consideration.

Sincerely yours,

Thomas K. Minter
Deputy Commissioner for
Elementary & Secondary Education

Enclosure

Question 1

When can we expect the publication of new policies, standards of procedures related to the supplanting problem and its consequences in the audits?

Response

By February 1, 1978, proposed interpretative rules regarding supplement/supplant will be formulated for publication in the Federal Register.

By February 1, 1978, a draft codified manual of interpretative rules, directives, requirements, guidelines, recommendations, and illustrative examples will be prepared.

A meeting has already been held with the HEW Audit Agency to discuss the proposed rules; and draft materials, as they are prepared, will be shared with that Agency. It is expected that findings in audits in process as of February 1, 1978, and in those audits which will begin after that date will reflect only those supplanting violations which are clearly demonstrated to be in noncompliance in accordance with consistent and clear OE policy pursuant to the statute and regulations.

Question 2

What has been done to remedy the findings of NIE regarding internal OE conflicts in the administration of Title I? What is the current policy?

Response

No conflict has existed with respect to the supplement/supplant requirement of Title I concerning the intent of the legislation or regulations.

Rather, any conflict which has occurred has resulted from the lack of clearly written standards to apply to cases of alleged supplanting and the documentation necessary to prove that supplanting has occurred.

The preparation of clearly written principles on which OE policy is based, the preparation of interpretative rules regarding supplement/supplant which clarify units of measure, levels of analysis, time frames, evidence which can be considered presumptions of supplanting by auditors, and penalties for violations for use of OE program staff, the HEW Audit Agency and all eligible Title I applicants will assure that conflicts will not arise in the future.

Question 3

Has the HEW Finance Agency ever used its power to offset these debts against state allocations? If not, why has this collection mechanism been neglected?

Response

In the past, collection of offset against State allocations has not been made primarily because the method of disbursing funds to State agencies does not readily adapt to handling offsets. Funds for all State managed programs are disbursed through a system of letter-of-credit managed by either the Office of Education (OE) (43 States) or the Departmental Federal Assistance Financing System (DFAFS) (7 States). The letter-of-credit includes authorization (grants) from all programs managed by OE (OE System) or all programs managed by HEW agencies (DFAFS System) and funds are drawn initially without identification of the specific authorization (grants) involved. It is only when Quarterly Expenditure Reports are received from the States that identification is made of the specific authorizations to which the cash draw-downs apply. To accomplish offset under these systems requires special reporting by the States and frequently onsite followup by an HEW Auditor or other staff member to insure full compliance by the States. The complexity of the action has made HEW officials reluctant to order offset. During the past year, however, where offset through the letter-of-credit is the only avenue of settlement, we have pursued that process, and will continue to do so in the future, to effect collection, without regard to the complexities or repercussions.

Question 4

The HEW Finance Agency is finally responsible for collecting audit exceptions that have been upheld. On the whole, their record has been very poor. Has the Commissioner's office given its active support to their efforts to collect these debts? If not, why not?

Response

The record for recovering amounts due the Federal Government has indeed been poor. I am happy to report, however, that over the past year we have taken positive action through revised procedures and instructions to turn this situation around. On an agency-wide basis, we have: (1) established a system of control to be maintained by the OE Audit Liaison Office, which tracks each audit report from the period of receipt through their ultimate disposition, (2) developed control forms that not only update the tracking system but provide documentation to the OE Finance Division to establish and pursue the receivables, (3) clearly established the collection responsibilities for all receivables in the OE Finance Division and defined the responsibilities, and (4) caused an agency-wide inventory to be made of all outstanding audit reports and charged the respective Deputy Commissioners with direct responsibility for early resolution of all outstanding reports. In the OE Finance Division we have taken action to: (1) establish an accounts receivable record on all audit exceptions where a determination has been made but no record established, (2) increased the staff of the Accounts Receivable Section by two positions to accommodate the increased workload, (3) initiated collection letters on all receivables where collection is not currently in process, (4) let a contract to establish an automated accounts receivable system that will not only provide a record of each receivable but also the ability to age each account for activity, (5) established interest bearing notes as a mechanism for collecting large amounts on an incremental basis from small proprietary organizations to whom bankruptcy would result if large payments were demanded (note: interest charged is based on Treasury Department rates for the national debt and collections are deposited to Miscellaneous Receipts for use in support of the national debt), and (6) authorized offsets, hold payments, and other actions as necessary to force action by reluctant debtors. As a result of these actions we are experiencing considerable success in securing settlements of audit exceptions that have been outstanding for a period of years.

Question 5

Please elaborate on the "policy recommendation" made to the Secretary which you say would eliminate audit problems. Specifically, how would procedures or standards be changed?

Response

The current recovery measure in the case of comparability violations by an LEA is to seek refund of the total amount of Title I expenditures for a fiscal year regardless of the number of Title I schools affected by the violation. This penalty is considered to be inequitable, particularly where many of the LEA schools are in compliance with comparability. Furthermore, it is unrealistic to expect SEAs and LEAs to pay back the total Title I expenditures for the year.

The alternative measures of recovery proposed for the Secretary's consideration are: (1) the aggregate amount the LEA would have spent to achieve comparability in each noncomparable school (but not in excess of the amount of Title I funds spent at that school); and (2) the amount of Title I expenditures only for each Title I school out of compliance with comparability.

Question 6

According to your testimony, 14 LEAs that were not in compliance with comparability requirements failed to submit revised reports. Yet their applications were not disapproved. Who should have taken action on these 14 cases, and why was nothing done?

Response

The regulations require that if a local educational agency has failed to demonstrate comparability by December 1, the State educational agency shall suspend its approval of the project until the date that a report is submitted to that agency which does demonstrate that the local educational agency has achieved comparability. During this period of suspension no Title I funds may be used to pay for obligations incurred.

If comparability is achieved prior to March 31 the suspension is lifted. If, however, comparability is not achieved by March 31, the entire project is disapproved as of the preceding December 1.

The 14 LEAs in question failed to demonstrate comparability by December 1, 1976. They all made the necessary adjustments and submitted satisfactory revised reports at various times prior to March 31. Thus, none of these LEAs had their projects finally disapproved. During the period of suspension, however, each LEA had its obligational authority withdrawn.

Question 7

During earlier hearings, the subcommittee heard testimony to the effect that services to nonpublic school children were poor or nonexistent. What steps is USOE taking to improve this situation? Will these steps result in a broad improvement, or only in scattered local corrections?

Response

The Office of Education is not aware of the existence of any hard data which may be used to justify a conclusion that Title I services to nonpublic school students are poor to nonexistent on a national scale. It is our opinion that conclusions on the extent and quality of Title I services to private school children can be made only on a State-by-State or LEA-by-LEA basis. This is due to the fact that the distribution of private school children varies greatly among States. Also, the incidence of educational deprivation among private school children may vary considerably in individual LEAs and even in eligible and noneligible attendance areas in a given LEA. Until data on these and other variables on the participation of private school children are gathered, we feel that conclusions of the type indicated cannot be justified.

The Office of Education regards the participation of private school children as an important factor in the Title I program in those LEAs where such children are eligible for services. In all such cases Title I program review teams will regard the participation of private school children as a priority area for concern during the conduct of the review. Any deficiencies that are discovered will be brought to the attention of the SEA for immediate correction. In those cases in which a determination is made that technical assistance is needed, or if requested at any time by an SEA, the Office of Education will respond as quickly as its resources will permit. When complaints are received concerning the lack of comparable or equitable participation of private school children in Title I, or when such situations are uncovered by OE review teams, we will promptly institute the process outlined in the legislation which may result in the establishing of a Title I bypass in the affected LEA. It is our feeling that by continuing to direct our efforts in this manner, as we are doing at the present time, we will effect broad improvement in the participation of private school children in those places where such improvement is needed.

Question 8

What constitutes "acceptable corrective action" regarding audits, as stated in page 9 of your testimony?

Response

Once an allegation of misuse of Title I funds is made by the auditors, it becomes the responsibility of the local school district to prove the allegation is unfounded. In many cases, local school districts lacked sufficient documentation to prove that various equipment purchases, rental costs, salary payments, etc., were for Title I purposes only.

The acceptable corrective action referred to in the testimony was the construction, after the fact, of documentation (such as affidavits from personnel who worked in the program) which either disproved the allegation or raised serious questions about the validity of the audit finding.

Additional corrective action was the establishment by the local school districts of proper procedures for maintaining the necessary documentation for all Title I activities on a current basis.

Question 9

Describe comparability reporting requirements and how they differ with respect to schools of different sizes and grade configurations?

Response

Comparability data need not be collected (a) if the entire school district is designated as a target area (no-wide variance resulting in services to all schools), or (b) if there is only one school in the grade/grouping, or (c) from any school with a student enrollment of 100 or less.

For all other schools, data needs to be collected to demonstrate that instructional staff and State and local funds used for instructional purposes for each Title I school are comparable to the average for non-Title I schools (within five percent of the non-Title I average).

The following groupings of schools according to grade span served are permitted:

Grade span served	Not to exceed 3 groups
K through 12	e.g. elementary, intermediate or junior high, secondary or high
7 or fewer grades above K	Not to exceed one group
8 or 9 grades above K	Not to exceed two groups
6 through 12 only	
5 or 6 grades	Not to exceed two groups
4 or less	Not to exceed one group

Schools serving 8 or more grades above K may comprise an additional group.

In addition, for any grade span if the largest school enrollment is at least two times the smallest school enrollment, the grade span may be divided into two separate groups (excluding schools with 100 or fewer enrollment).

Question 10

Since the law tells OE to make allocations to LEAs does OE have any plans to actually comply with the law?

Response

Using the data currently required by the statute, OE is unable to make allocations directly to local educational agencies.

While it might be possible to collect most of the data or estimated data from the States, the timeliness of receiving and processing the data would probably preclude USOE from announcing allocations until August or September at the earliest. Missing data from one school district would hold up the allocations for all school districts.

There are no census data available for approximately 4,500 school districts, 28% of the total number of school districts in the Nation. Some States have used low-income or other data to estimate the census count for these districts for allocation purposes, but other States do not use census data to distribute Title I funds since the validity of the data is questioned and more current data are available to reflect the current distribution of children in low-income families.

Not all States collect the AFDC data above poverty by school district. The suballocation of Title I funds is held up in some States or counties for months while the State tries to match addresses of AFDC recipients to school districts so that each district receives its proportionate share of the AFDC count. Many States use the total AFDC count to compute Title I allocations and the count of children in families receiving AFDC payments above poverty as required by the statute is not collected at all.

The foster children data are rarely available by school district. In fact most States do not use these data because there is such a turnover of children that the children counted in the county formula data cannot be identified and, therefore, cannot be assigned to the correct district. Therefore, these data could not be furnished by the SEAs to USOE even if they were requested. Estimated data would have to be accepted.

Currently, attempts are being made to collect the 1980 Census data by school district. An unsuccessful effort was made to have the Bureau of Census redesign the 1980 Census maps to incorporate school district geography. Since the Bureau of Census could not redesign the maps, HEW is pursuing the chance of having the school district codes included in the Census questionnaire.

In any case, the National Center for Education Statistics will be able to use the Census maps and school district maps to determine the census by school district. The 1980 Census data by school district will include all districts, including the ones with enrollment less than 300.

Question 11

How does OE deal with sub-county allocation problems where LEAs cross county lines? Did OE ever resolve the sub-county allocation problems discovered in Pennsylvania in 1974-75? If so, how?

Response

The Title I Regulations provide that an allocation made to a local educational agency located in more than one county shall be made separately for each county in which a part of the school district served by that local educational agency is located. The grant for the local educational agency is the sum of its allocations from the aggregate grant of the counties in which it is located.

The sub-county allocation problem in Pennsylvania was in Fiscal Year 1974, which was the first year that 1970 Census data were used and also the first year that there was a "hold harmless" for local educational agencies.

The Pennsylvania SEA distributed the 1974 funds by guaranteeing each LEA 90% of their 1973 entitlements. The balance of the 1974 funds was distributed on a state-wide basis to those school districts which had an increase in the number of formula children from the 1970 Census over the 1960 Census. This sub-allocation procedure was inconsistent with the statute and regulations for the following reasons:

(1) The "hold harmless" provision was not applied correctly.

(2) The Census data were not used correctly.

(3) Allocations were computed on a state-wide basis without regard to the county grant of LEAs in particular counties.

While the Pennsylvania SEA was willing to correct the first two problems, it claimed that the third problem could not be overcome because of the considerable number of LEAs which cross county boundaries and the time and expense which would be required to determine individual Title I allocations to individual LEAs in each county. A request was made by the SEA to allow the use of other methods to distribute funds.

When OE pointed out that the statutory provision left little flexibility in this matter, the SEA agreed to compute LEA allocations in accordance with the statute and regulations.

Question 12

The 1975 Pollen Report stated that attempts to improve audit effectiveness "Are frustrated by the absence of clear lines of responsibility, clear policies and clear procedures." What has been done specifically to change this?

Response

The audit function has been given greater visibility and direction by the establishment of an audit liaison and coordination staff under the supervision of the Executive Deputy Commissioner for Support Services. Procedures have been established to ensure that prompt action is taken on all audit reports. The Deputy Commissioners are responsible for prompt resolution of all audit findings and appropriate followup action in their respective areas. Collection responsibilities have been assigned to the OE Finance Division.

Question 13

Lack of understanding, even open distrust, has long been alleged between Title I program officials and HEW auditors. What steps, if any have been taken to improve this situation and thus produce more reasonable and effective auditing?

Response

This allegation may be somewhat exaggerated since, on the whole, Title I program officials and HEW Audit Agency staff have maintained generally an open working relationship. The HEW Audit Agency is and must remain an independent organization, however, so that differences of opinion on various issues are bound to arise on occasion. The HEW Audit Agency is regionalized and communication regarding the reasons for OE's actions on audit matters is always more difficult in a regionalized situation.

In order to make the working relationship more effective, Title I program staff have participated in training sessions for HEW auditors to explain OE's policies on various program issues and to identify areas of concern.

Meetings have been held with Audit Agency staff to clarify policy issues which have arisen in audit reports. Program staff regularly attend audit exit conferences and routinely meet with the auditors to discuss the findings in draft audit reports and attempt to resolve any differences prior to the issuance of the final audit report.

Question 14

What is the current staffing of the audit hearing board, and is this adequate to its needs?

Response

The current staffing consists of a chairman and a secretary and is adequate to handle the current number of hearings on Title I audit appeals.

Question 15

What has OE's ruling been with respect to the presence of teachers on PACs?

Response

Neither the statute nor the regulations addresses the question of the presence of teachers on PACs. A State, therefore, may issue guidelines to restrict or prohibit their membership on PACs or to limit their participation to that of resource persons to the PACs. However, both the statute and the Federal Regulations specify that the (1) majority of the members of PACs be parents of children to be served, and (2) that all members of PACs be selected by parents in the school attendance areas. The regulations further require that members of advisory councils reside in the school district and members of a school council be residents of the school attendance areas of the school they serve.

Therefore it is OE's policy that, if the State has issued no guidelines, teachers may serve as members on PACs after the majority requirement has been met only if (1) they are selected by the parents and (2) they are residents of the school district or, in the case of a school council, reside in the attendance area of that school.

Question 16

Your testimony refers to difficulties in SEA administration during "the early years." What were these difficulties specifically? Is there any solid evidence to show that state level administration has been improved?

Response

In fiscal year 1966, State departments of education had to gear up to administer a billion dollar program which affected almost all school districts in the United States. Funding did not become available until January 1966. Title I was the first program directed toward a particular group of children. All previous education programs had been authorized for specific purposes--library materials, guidance and counseling, equipment, etc. It was also the first program which required school districts to evaluate the results of the program. State educational agency staff had first to become knowledgeable about Title I requirements and then train LEA staff in the complexities of the program. The specific difficulties encountered were: the proper selection of eligible schools; the proper selection of the children to be served, the identification of the special needs of the children as opposed to the needs of the school system; and lack of expertise in evaluation techniques.

The pressure to get programs underway to utilize the available funds by the end of the fiscal year, and to meet the needs of school systems rather than the needs of educationally deprived children resulted in the approval of general aid programs, the purchase of excess equipment, and school construction. Other pressures were exerted to use Title I funds to assist in desegregation efforts. Once such programs got started it was difficult to make changes in the next years.

Although no study has been conducted to show the changes that have occurred in State administration, information obtained during program reviews confirm that State level administration has improved.

Target areas and children to be served are being selected properly, the needs of the children rather than schools are being addressed, and equipment purchases are limited to those needed for the program. Expertise in ways to teach educationally deprived children has been developed and evaluation of the program has improved extensively.

Question 17

What do you believe is the greatest remaining need at the state administration level if they are to continue to improve?

Response

Additional resources (staff and travel funds) to provide technical assistance to LEAs to improve the quality and cost effectiveness of Title I programs.

Question 18

Has USOE staff been increased systematically in order to give better and more consistent attention to existing problems, especially with auditing and the resolution of differences? Has this taken place only in BESE, or in such other places as the general counsel's office?

Response

The number of positions authorized in Washington for program administration has remained at 72 since 1971. No full-time positions were ever authorized at the program level with respect to auditing or the resolution of differences. The five geographic sections of the Operations Branch, whose primary responsibilities are continuous liaison with State departments of education and the conduct of program reviews, were delegated that responsibility. The volume of audit reports and the complexity of the issues raised could not be handled by other than full-time staff, however, and a substantial backlog developed. It became necessary to organize a Task Force of members of the Operations Branch to spend full-time on audit matters, thus reducing the resources devoted to monitoring activities.

The Task Force has now been disbanded and the responsibility for the resolution of audit reports has again been temporarily assigned to the respective geographic sections. Since this arrangement proved to be unsatisfactory in the past, two additional positions (one professional and one clerical) have recently been authorized to handle audit matters, including audit resolutions, appeals, and followups on a full-time basis.

It is anticipated that some time in the near future it will be possible to undertake recruitment for and fill these positions.

The Education Division of the Office of the General Counsel was reorganized in February 1976 to establish a Title I and Title I Audit Proceedings Branch. There are three full-time attorneys assigned to this Branch.

The workload involved in appeals before the Title I Hearing Board, law suits, the bypass provision for providing services to nonpublic school children, day-to-day problems requiring legal interpretations and the preparation of regulations in our opinion make current authorized staffing inadequate.

Question 19

On page 3 of your testimony, you refer to dissemination activities for Title I. Are any hard data available on the extent to which LEAs have adopted disseminated program models, or on the success of such transplants?

Response

The major dissemination efforts for Title I exemplary projects in the past have focused on the Project Information Packages (PIPs). The five original PIPs were adopted, replicated, and field tested in 19 sites. This two year field test resulted in the conclusions that the complex educational approach found to be effective in one place can be faithfully replicated and that in most replications the project students equalled or surpassed the achievement growth expected for disadvantaged children.

Beginning in the fall of 1977, 105 school districts intended to implement a PIP project and a study will determine the success of these replications. PIPs have now been completed on six more Title I projects. Numerous other exemplary project directors have reported adoptions of their projects, but no hard data reflecting actual numbers of such adoptions is currently available.

A concerted effort to disseminate Title I and migrant exemplary projects is now underway in collaboration with the National Diffusion Network. Twenty-one Title I and migrant projects have been funded for dissemination. Eleven of these have PIP materials. Technical assistance is being provided so that appropriate training materials can be generated. Regional conferences are being held during the current school year to introduce these projects to State educational agency personnel and selected local educational agency personnel. It is expected that this effort will generate approximately 300 new adoptions for the school year 1978-79. A study will track the number of adoptions generated and their quality will be documented.

2nd List

Question 1

What is the greatest problem in administering Title I at the Federal level? At the State level? Local level?

Response

Federal Level

The greatest problem in administering Title I at the Federal level is the lack of knowledge upon which to recommend improvements in the program through regulatory or legislative changes, or through the dissemination of information on program effectiveness. Information is needed on the impact of Title I regulations on the operation of the program in both rural and urban areas; on desegregation, and on nonpublic school children. Also we need to know more about the effects of the comparability requirements, pullout programs compared to mainstream programs and school level parent advisory councils.

In addition, information is needed to determine the universe of eligible educationally deprived children, and the distribution of Title I expenditures by grade levels and areas of emphasis (reading, math, training, support services, etc).

State Level

The greatest problem faced by State officials is under-staffing. Currently, State educational agencies have limited personnel and fiscal resources to ensure that Title I programs operate in full compliance with the Federal regulations and to provide technical assistance to LEAs in order to improve the quality and cost-effectiveness of Title I programs.

Local Level

The greatest problem in administering Title I at the local level is not the same in all school districts. Some local educational agencies are not completely comfortable with the basic Title I requirements such as selecting attendance areas, identifying children and keeping the programs discrete and supplementary. For others, establishing PACs at the school level is a major problem and still others complain about comparability or excessive paperwork.

Question 2

In your view do the States need a greater set-aside for State administration?

Response

With the amendments to the statute, States have been called upon to enforce more and more regulations, implement new and more detailed Title I evaluation requirements, monitor districts for comparability determination, enforce additional parent advisory council participation in Title I programs, and provide technical assistance and leadership to support demands on LEAs. In recognition of these additional responsibilities placed upon the States, it is our view that the set-aside for State administration should be increased.

2nd List

Question 3

What does the Office of Education tell States with respect to the ability of the State to issue regulations which go beyond the Office of Education's?

Response

The Office of Education informs the States that the Federal law and regulations contain the requirements for administration of Title I, and that their administrative and technical assistance functions must adhere to these requirements. There have been no instructions issued to States which specifically prohibit their issuance of regulations that are more restrictive than the Federal regulations. Conversely, the issuance of State regulations of this nature has not been encouraged by OE.

In some instances States have placed additional requirements upon LEAs in their States to assure that the projects they approve are, in their judgment, of sufficient size, scope, and quality, to give reasonable promise of substantial progress toward meeting the special educational needs of children to be served. This requirement is set forth in Section 116a.22(b) of the Federal regulations.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

JAN 10 1978

Honorable Carl D. Perkins
House of Representatives
Washington, D.C.

Dear Mr. Perkins:

Enclosed is a report on the status of Title I audits on a State-by-State basis and a comparison of the number of months taken to resolve audit findings between the first two years that audit reports on the Title I program were issued and the two most recent years.

This information is in response to question 4. All other information requested in your November 15 letter on administrative issues related to Title I as a followup to the hearing held on October 25 by the Subcommittee on Elementary, Secondary and Vocational Education was furnished in my letter of December 21.

Thank you again for giving us the opportunity to submit additional material for incorporation into the hearing record.

Sincerely yours,

Thomas K Minter
Thomas K. Minter
Deputy Commissioner for
Elementary & Secondary Education

Enclosure

Question 4

Has the completeness and accessibility of audit exception data, and its status in the resolution process, been improved significantly during the last two years? If so, what is the present system of handling this data?

Response

Title I, ESEA
Audit Resolution Time Period

First Two Years	No. of Months	Last Two Years	No. of Months
1967	45	1975	8
1968	25	1976	7

(State by State tables referred to are retained in Subcommittee files.)

2nd List

Question 5

What is the last step in the audit resolution process? How many steps are there in that total? What are they?

Response

The last step in the audit resolution process is the followup necessary to ensure that State and LEA procedures have been changed to avoid future audit exceptions.

There are ten steps in the process. These include:

1. OE review of draft audit report and comments furnished HEW Audit Agency.
2. Resolution of disagreements, if any, between OE and HEW Audit Agency by the Comptroller upon appeal by OE.
3. Attendance of program officials at audit exit conference.
4. Final determination letter issued to SEA based on final audit report.
5. Opportunity given to SEA to appeal OE's determination and request a hearing before Title I Audit Hearing Board if refund request is involved.
6. Finance Division sets up account receivable of any refund due.

7. Hearing and action by Title I Audit Hearing Board.

8. Action by Commissioner on Hearing Board's determination.

9. Finance Division institutes collection procedures.

10. Followup by program staff of State and LEA actions to improve procedures and collection of refunds due by Finance Division.

November 15, 1977

Dr. Philip Kropatkin
Deputy Director
HEW Audit Agency
Department of Health, Education, and Welfare
Washington, D. C.

Dear Dr. Kropatkin:

During the course of the Subcommittee's hearing on October 25th on administrative issues related to Title I, ESEA, you were informed that some of the members wished to submit additional questions to be answered for the record. Due to the constraints of time, we were not able to pursue all of these questions at the hearing.

Therefore, we would appreciate your responding to these questions as soon as possible, and no later than November 30th, so that we can include them in our printed hearing record. The questions are attached to the letter.

Thank you very much.

Sincerely,

Carl D. Perkins
Chairman

CDP:bk

DR. KROPOTKIN

1. Has the HEW Audit Agency made or taken opportunities for individual auditors to become more familiar with the philosophy and operation of Title I by working closely with agency officials at the national or regional level?

2. What is the last step in the audit resolution process? How many steps are there in that total? What are they?

3. Has the completeness and accessibility of audit exception data, and its status in the resolution process, been improved significantly during the last two years? If so, what is the present system of handling this data?

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

AUDIT AGENCY

December 1, 1977

Honorable Carl D. Perkins
House of Representatives
Washington, D.C. 20515

Dear Mr. Perkins:

Thank you for your letter dated November 15, 1977, requesting answers to questions concerning audits of the ESEA Title I program. Answers to your questions are attached (Attachment A).

In addition to the above, a member of the Subcommittee separately requested information on the previous experience of auditors assigned to Title I audits (Attachment B). The Subcommittee staff also requested the following Audit Agency documents: (1) Audit Guide for Review of ESEA Title I Programs (Attachment C), (2) Policy Handbook (Attachment D), and (3) Procedures Handbook (Attachment E).

Please let me know if I can further assist you.

Sincerely yours,

Philip Kropatkin
Philip Kropatkin
Deputy Director
HEW Audit Agency

Attachments

ATTACHMENT A

ANSWERS TO QUESTIONS CONCERNING TITLE I AUDITS

A. Has the HEW Audit Agency made or taken opportunities for individual auditors to become more familiar with the philosophy and operation of Title I by working closely with agency officials at the national or regional level?

Auditors assigned to Title I audits attend OE sponsored regional seminars and workshops for State agency Title I personnel. At these meetings, OE personnel explain the programmatic concerns of Title I, including any new changes in regulations. Audit input is a regular feature of these discussions. Also, cooperative workshops have been co-sponsored by the Audit Agency and OE for the benefit of auditors working with the Title I program. In addition, field auditors discuss audit findings with OE representatives, and our headquarters staff is in frequent contact with OE on significant audit matters.

B. What is the last step in the audit resolution process? How many steps are there in that total? What are they?

A summary of the total Title I audit process follows:

(1) The audit process begins at the State agency with an entrance conference, at which the auditors explain the nature of the audit and the audit process. Also, the auditors establish a liaison within the State agency for discussing matters arising during the course of audit.

(2) The auditors then perform a survey of the State agency's policies and procedures for administering the Title I program. They also select local school districts for detailed reviews to help evaluate the adequacy of State agency administration and compliance with Title I requirements.

(3) At the selected local school districts, further surveys are made for isolating specific program weaknesses and a detailed audit is made in these specifically identified areas. Findings are discussed with cognizant district officials.

(4) The field audit is concluded at the State agency. At this point, further work may be done in relating specific problems noted at the school districts with procedural or administrative weakness at the State level. Findings are discussed with cognizant State agency officials.

(5) A draft audit report is submitted to the State agency for their review and written comments.

(6) Subsequent to receipt of the State's comments, an exit conference is held at which the State agency may present any further comments that might have a bearing on the facts presented in the draft report. The State may also submit additional facts after the conference. In all cases, OE officials are invited to attend exit conferences.

(7) A proposed final report is sent to OE for comments prior to issuance to the State. This report incorporates the State agency's position on the findings and recommendations. There is a procedure for arbitrating and attempting to resolve any differences in cases where agreement cannot be reached with OE as to recommendations in the report.

(8) The final report is issued to the State agency and OE.

(9) OE notifies the State agency of a final determination with respect to the audit findings.

(10) If the State does not concur with OE's determination it may, within 30 days, request a hearing on the issues before the Title I Audit Hearing Board.

(11) At the conclusion of the hearing process, the Hearing Board provides a decision for the Commissioner's review. The Commissioner may affirm, modify, or reverse the initial decision. If he does not review the decision, it becomes final.

The Audit Agency considers only the last three steps in the above process to be "audit resolution", since OE is responsible for resolving audits. However, during and between these three steps, there are meetings and exchanges of information between OE and the State agency and between OE and the Audit Agency.

> C. Has the completeness and accessibility of audit exception data, and its status in the resolution process, been improved significantly during the last two years? If so, what is the present system of handling this data?

As a matter of custom and practice, the individual audit report should contain all the information necessary to establish and support "audit exceptions". The supporting audit working papers are available, however, upon request to concerned parties should the audit report need clarification of the presentation of the audit exception data, or where detailed data was not incorporated because of sheer volume. Occasionally, too, the State agency may be called upon for data not available at the time of the audit. There have been no significant changes in this process in recent years, other than for efforts always underway to improve upon the completeness of audit reports so that they are self-standing, as much as possible.